APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 04-13740

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs-Appellees,

v.

MOHAWK INDUSTRIES, INC.,
Defendant-Appellant.

Sept. 27, 2006

Appeal from the United States District Court for the Northern District of Georgia. ON REMAND FROM THE UNITED STATES SUPREME COURT

Before ANDERSON, HULL and GIBSON,* *Circuit Judges.*

PER CURIAM:

In this case, plaintiffs-appellees Shirley Williams, Gale Pelfrey, Bonnie Jones, and Lora Sisson are current or former hourly employees of defendant-appellant Mohawk Industries, Inc. ("Mohawk"). The plaintiffs filed this class-action complaint alleging that Mohawk's widespread and knowing employment and harboring of illegal workers allowed Mohawk to reduce labor costs by depressing wages for its legal

---

* Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.

hourly employees and discouraging worker's-compensation claims, in violation of federal and state RICO statutes. The plaintiffs also alleged that Mohawk was unjustly enriched by the lower wages it paid, as well as the reduced number of worker's-compensation claims it paid. The district court denied in part and granted in part Mohawk's 12(b)(6) motion, and this interlocutory appeal followed.

After review and oral argument, this Court affirmed in part and reversed in part. *Williams v. Mohawk Indus., Inc.*, 411 F.3d 1252 (11th Cir.2005). Appellant Mohawk then filed an application for writ of certiorari on two questions:

> 1. Whether a defendant corporation and its agents can constitute an "enterprise" under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), in light of the settled rule that a RICO defendant must "conduct" or "participate in" the affairs of some larger enterprise and not just its own affairs.
>
> 2. Whether plaintiffs state proximately caused injuries to business or property by alleging that the hourly wages they voluntarily accepted were too low.

The United States Supreme Court granted the appellant's petition for writ of certiorari "limited to Question 1 presented by the petition." *Mohawk Indus., Inc. v. Williams*, ___ U.S. ___, 126 S.Ct. 830, 163 L.Ed.2d 705 (2005).

After oral argument, however, the Supreme Court entered a summary, three-sentence order that (1) dismissed the writ as improvidently granted as to Question 1, and (2) vacated the judgment of our prior opinion and remanded the case to this Court "for further consideration in light of *Anza v. Ideal Steel Supply Corp.*, ___ U.S. ___, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006)." *Mohawk Indus., Inc. v. Williams*, ___ U.S. ___, 126 S.Ct. 2016, 164 L.Ed.2d 776 (2006).

This case is now before the Court on remand from the Supreme Court. After the remand, this Court ordered supplemental briefing as to not only *Anza*, but also the intervening decision by the Georgia Supreme Court in *Williams General Corp. v. Stone*, 280 Ga. 631, 632 S.E.2d 376 (2006). After further consideration, this Court now reinstates its prior opinion in part and modifies it in part as follows.

I. BACKGROUND

Mohawk is the second largest carpet and rug manufacturer in the United States and has over 30,000 employees. According to the plaintiffs, Mohawk has conspired with recruiting agencies to hire and harbor illegal workers in an effort to keep labor costs as low as possible.[1] For example, according to the plaintiffs' complaint, Mohawk employees have traveled to the United States Border, including areas near Brownsville, Texas, to recruit undocumented aliens that recently have entered the United States in violation of federal law. These employees and other persons have transported undocumented aliens from these border towns to North Georgia so that those aliens may procure employment at Mohawk. Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.

Furthermore, "[v]arious recruiters, including Mohawk employees, have provided housing to these illegal workers

---

[1] At this point in the litigation, we must assume the facts set forth in the plaintiffs' complaint are true. *See Anza*, 126 S.Ct. at 1994 (stating that on a motion to dismiss, the court must "accept as true the factual allegations in the amended complaint"); *Marsh v. Butler County*, 268 F.3d 1014, 1023 (11th Cir.2001) (*en banc*) (setting forth the facts in the case by "[a]ccepting all well-pleaded factual allegations (with reasonable inferences drawn favorably to Plaintiffs) in the complaint as true"). Because we must accept the allegations of plaintiffs' complaint as true, what we set out in this opinion as "the facts" for Rule 12(b)(6) purposes may not be the actual facts.

upon their arrival in North Georgia and have helped them find illegal employment with Mohawk." Additionally, Mohawk knowingly or recklessly accepts fraudulent documentation from the illegal aliens.

The plaintiffs further allege that Mohawk has concealed its efforts to hire and harbor illegal aliens by destroying documents and assisting illegal workers in evading detection by law enforcement. According to plaintiffs' complaint, Mohawk takes steps to shield those illegal aliens from detection by, among other things, helping them evade detection during law enforcement searches and inspections at Mohawk's facilities.

According to the complaint, Mohawk's widespread and knowing employment and harboring of illegal workers has permitted Mohawk to reduce labor costs. Mohawk has done so by reducing the number of legal workers it must hire and, thereby, increasing the labor pool of legal workers from which Mohawk hires. This practice permits Mohawk to depress the wages it pays its legal hourly workers.

Finally, the plaintiffs allege that Mohawk is "able to save substantial sums of money" by paying its workers reduced wages. Furthermore, Mohawk knows that illegal workers are less likely to file worker's-compensation claims, and, therefore, Mohawk is able to save additional monies. According to the plaintiffs, these benefits constitute unjust enrichment under state law.

Mohawk filed a Rule 12(b)(6) motion to dismiss the plaintiffs' complaint for failure to state a claim. The district court determined that the plaintiffs had stated a claim under both federal and state RICO statutes, as well as a claim for unjust enrichment under state law for paying legal workers lower wages because of the illegal workers Mohawk employed. However, the district court dismissed the plaintiffs' unjust-enrichment claim insofar as it was based on the reduced num-

ber of worker's-compensation claims Mohawk was forced to pay.[2]

II. FEDERAL RICO CLAIMS

Pursuant to 18 U.S.C. § 1962(c), it is illegal "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . ." 18 U.S.C. § 1962(c). Thus, in order to establish a federal civil RICO violation under § 1962(c), the plaintiffs "must satisfy four elements of proof: '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Jones v. Childers*, 18 F.3d 899, 910 (11th Cir.1994) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985)). These requirements apply whether the RICO claim is civil or criminal in nature.

In civil cases, however, RICO plaintiffs must also satisfy the requirements of 18 U.S.C. § 1964(c). Section 1964(c) states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . ." 18 U.S.C. § 1964(c). Thus, under § 1964(c), civil RICO claimants, such as the plaintiffs here, must show (1) the requisite injury to "business or property," and (2) that such injury was "by reason of" the substantive RICO violation. We discuss each of these requirements in turn.

---

[2] This Court reviews the denial of a Rule 12(b)(6) motion "de novo, applying the same standard as the district court did." *Hoffman-Pugh v. Ramsey*, 312 F.3d 1222, 1225 (11th Cir.2002). A complaint should not be dismissed pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim." *Beck v. Deloitte & Touche*, 144 F.3d 732, 735 (11th Cir.1998) (internal quotation marks and citation omitted).

A. Pattern of Racketeering Activity

As mentioned above, there are four requirements under § 1962(c). Because elements (3) and (4)-a pattern of racketeering activity-are easily met in this case (at least at the motion-to-dismiss stage), we address them first.

"A 'pattern of racketeering activity,' for purposes of the RICO Act, 'requires at least two acts of racketeering activity.'" *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1397 (11th Cir.1994), *modified on other grounds by* 30 F.3d 1347 (11th Cir.1994). "An act of racketeering is commonly referred to as a 'predicate act.' A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." *Maiz v. Virani*, 253 F.3d 641, 671 (11th Cir.2001) (quotation marks, citations, and brackets omitted). "If distinct statutory violations are found, the predicate acts will be considered to be distinct irrespective of the circumstances under which they arose." *Cox,* 17 F.3d at 1397 (quotation marks, citations, and emphasis omitted).

According to 18 U.S.C. § 1961(1)(F), "'racketeering activity' means any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), . . . if the act indictable under such section of such Act was committed for the purpose of financial gain." In this case, the plaintiffs have alleged that the defendant has engaged in an open and ongoing pattern of violations of section 274 of the Immigration and Nationality Act. In particular, plaintiffs allege that Mohawk has violated and continues to violate: (1) 8 U.S.C. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire[ ] for employment at least 10 individuals with actual knowledge that the individuals are aliens" during a twelve-month period; (2) 8 U.S.C. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal[ ], harbor[ ], or shield from detection, or attempt [ ] to conceal, harbor or shield from detection" aliens that have illegally entered the United States; and (3) 8 U.S.C.

§ 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage[ ] or induce[ ] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." According to the plaintiffs' complaint, Mohawk has committed hundreds, even thousands, of violations of federal immigration laws. Consequently, we conclude that the plaintiffs have properly alleged a "pattern of racketeering activity."[3]

B. Conduct of an Enterprise

With regard to elements (1) and (2) of the four-part test under § 1962(c), the plaintiffs must establish "conduct of an enterprise" and that the enterprise had a common goal. *See United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 2528-29, 69 L.Ed.2d 246 (1981) ("The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."). Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S.Ct. 1163, 1173, 122 L.Ed.2d 525 (1993).

An enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). As stated in *United States v. Goldin Industries, Inc.*, 219 F.3d 1271, 1275 (11th Cir.2000), "the existence of an enterprise is proved by evidence of an ongoing organization, formal or informal, and by evidence

[3] There is no dispute that these predicate acts, if they occurred, are related. *See Pelletier v. Zweifel*, 921 F.2d 1465, 1496-97 (11th Cir.1991) ("Predicate acts are related if they have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." (internal quotation marks and citation omitted)).

that the various associates function as a continuing unit." (internal quotation marks and citation omitted). Furthermore, "the definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation." *Id.*

In this case, the plaintiffs have alleged that Mohawk and third-party temp agencies/recruiters have conspired to violate federal immigration laws, destroy documentation, and harbor illegal workers. Specifically, the plaintiffs allege that

> [e]ach recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment need by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

Given the Rule 12(b)(6) stage of the litigation, the plaintiffs' complaint must be taken as true, and it has sufficiently alleged an "enterprise" under RICO; that is an association-in-fact between Mohawk and third-party recruiters. This Court has never required anything other than a "loose or informal" association of distinct entities. Mohawk and the third-party recruiters are distinct entities that, at least according to the complaint, are engaged in a conspiracy to bring illegal

workers into this country for Mohawk's benefit. As such, the complaint sufficiently alleges an "enterprise" under RICO.

As for the common purpose, the plaintiffs' complaint alleges that "[t]he recruiters and Mohawk share the common purpose of obtaining illegal workers for employment by Mohawk." The complaint further alleges that "[e]ach recruiter is paid a fee for each worker it supplies to Mohawk" and that "Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors." Furthermore, "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce." What is clear from the complaint is that each member of the enterprise is allegedly reaping a large economic benefit from Mohawk's employment of illegal workers.

In *United States v. Church*, 955 F.2d 688, 698 (11th Cir.1992), this Court concluded that the common purpose of making money was sufficient under RICO. Because the complaint clearly alleges that the members of the enterprise stand to gain sufficient financial benefits from Mohawk's widespread employment and harboring of illegal workers, the plaintiffs have properly alleged a "common purpose" for the purposes of RICO.

Furthermore, Mohawk "must participate in the operation or management of the enterprise itself." *Reves*, 507 U.S. at 185, 113 S.Ct. at 1173. That is, Mohawk "must have some part in directing" the affairs of the enterprise. *Id.* at 179, 113 S.Ct. at 1170. However, the Supreme Court has cautioned that "RICO liability is not limited to those with primary responsibility for the enterprise's affairs . . ." *Id.* In their complaint, the plaintiffs allege that "Mohawk participates in the operation and management of the affairs of the enterprise . . .," which includes some direction over the recruiters. Whatever difficulties the plaintiffs may have in proving such an allegation,

they have sufficiently alleged that Mohawk is engaged in the operation or management of the enterprise. Again, at this stage in the litigation, we simply cannot say whether the plaintiffs will be able to establish that Mohawk had "some part in directing" the affairs of the enterprise. However, they have alleged sufficient acts to survive a Rule 12(b)(6) motion.

Accordingly, we conclude that the plaintiffs' complaint states a claim that is cognizable under § 1962(c). In so doing, we note that the allegations in this case are similar to those in cases recently decided by the Second, Sixth, and Ninth Circuits. *See Trollinger v. Tyson Foods*, 370 F.3d 602 (6th Cir.2004) (former employees alleging employer used illegal immigrants in order to depress wages); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir.2002) (legally documented workers alleging that employers leveraged hiring of undocumented workers in order to depress wages); *Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc.*, 271 F.3d 374 (2d Cir.2001) (company alleging competitor hired undocumented workers in order to underbid competing firms). In each of these decisions, the circuit court determined that, at the Rule 12(b)(6) stage, the plaintiffs had alleged sufficient damages to be permitted to pursue their RICO claims. Although none of the opinions specifically addressed § 1962(c)'s requirements, each of these cases has essentially the same factual basis for RICO liability as the complaint before this Court.

We recognize that the above conclusion puts our circuit in conflict with the Seventh Circuit's decision in *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir.2004), *cert. denied*, 543 U.S. 956, 125 S.Ct. 412, 160 L.Ed.2d 318 (2004). In *Baker*, an employees' class-action lawsuit alleged that a meat-processing facility conspired with recruiters (and a Chinese aid group), and violated RICO by employing undocumented, illegal workers in an effort to drive down employee wages. The

Seventh Circuit concluded that the employees' union was a necessary party to the lawsuit. *Id.* at 690-91.

However, the Seventh Circuit in *Baker* also concluded that there was "another fatal problem" with the complaint. *Id.* at 691. Although stating that an "enterprise" arguably existed, the Seventh Circuit determined that there was not a common purpose among the entities in the enterprise. *Id.* at 691. Specifically, the Seventh Circuit stated that the employer "wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less); the Chinese Mutual Aid Association wants to assist members of its ethnic group. These are divergent goals." *Id.* at 691.

In our circuit, however, there has never been any requirement that the "common purpose" of the enterprise be the sole purpose of each and every member of the enterprise. In fact, it may often be the case that different members of a RICO enterprise will enjoy different benefits from the commission of predicate acts. This fact, however, is insufficient to defeat a civil RICO claim. Rather, all that is required is that the enterprise have a common purpose. In this case, the complaint alleges that Mohawk and the recruiters, under Mohawk's direction, worked together to recruit illegal workers to come to Georgia and that they had the common purpose of providing illegal workers to Mohawk so that Mohawk could reduce its labor costs and the recruiters could get paid. This commonality is all that this circuit's case law requires. *See Church*, 955 F.2d at 698. Again, while the plaintiffs may be unable to prove such allegations at trial, we cannot say at this 12(b)(6) stage of the litigation that they have failed to properly allege a common purpose.

We recognize that the *Baker* Court also concluded that there was no way to establish that the employer "operate[d] or manage[d] th[e] enterprise through a pattern of racketeering activity." *Baker*, 357 F.3d at 691 (emphasis omitted).

However, as this Court has noted, "the Supreme Court has yet to delineate the exact boundaries of the operation or management test." *United States v. Starrett*, 55 F.3d 1525, 1546 (11th Cir.1995). Although the exact boundaries have not been established, it is possible that the plaintiffs will be able to establish that Mohawk played some part in directing the affairs of the enterprise. Whether the plaintiffs ultimately establish sufficient evidence to meet the boundaries of the operation-or-management test is a question best answered at the summary-judgment stage or at trial. Accordingly, we conclude that the plaintiffs have sufficiently alleged conduct that may potentially satisfy the operation-or-management test. As such, the plaintiffs are entitled to continue with their claims at this juncture.

Having reviewed the four elements of § 1962(c), we turn to § 1964(c).

C. Injury to "Business or Property" Interest Under RICO

As indicated above, RICO's civil-suit provision states that "[a]ny person injured in his business or property by reason of" RICO's substantive provisions has the right to "recover threefold the damages he sustains . . ." 18 U.S.C. § 1964(c). "The terms 'business or property' are, of course, words of limitation which preclude [certain forms of] recovery." *Doe v. Roe*, 958 F.2d 763, 767 (7th Cir.1992). However, RICO is to be "liberally construed," *Sedima*, 473 U.S. at 497-98, 105 S.Ct. at 3285-86. Accordingly, we must determine whether the plaintiffs have a "business or property" interest that could be injured under RICO. We need not reach whether plaintiffs have a property interest because plaintiffs clearly have alleged a business interest affected by Mohawk's alleged RICO violations.

Indeed, this case is similar to the Ninth Circuit's *Mendoza* decision, where legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed

wages by hiring illegal workers. In *Mendoza,* the defendant claimed that the employees would have to show a " 'property right' in the lost wages[ ] by showing that they were promised or contracted for higher wages." *Mendoza*, 301 F.3d at 1168 n. 4. The Ninth Circuit concluded that this argument was misplaced, pointing out that the plaintiffs' claim did not implicate procedural due process. *Id.* Rather, the Ninth Circuit concluded that "what is required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes." *Id.* (citations omitted). Given that a relationship clearly exists between plaintiff workers and their employer, Mohawk, we conclude that a similar business interest exists in this case, and that the employees' alleged injury to their business interests satisfies the business-interest requirement. Consequently, the plaintiffs have alleged a sufficient injury to a business interest to pursue their RICO claims.

D. "By Reason Of" the Substantive RICO Violations

We now turn to the "by reason of" requirement contained in § 1964(c). The "by reason of" requirement implicates two concepts: (1) a sufficiently direct injury so that a plaintiff has standing to sue; and (2) proximate cause. *See Trollinger*, 370 F.3d at 612 ("RICO's civil-suit provision imposes two distinct but overlapping limitations on claimants-standing and proximate cause."); *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1307 (11th Cir.2003), *cert. denied,* 541 U.S. 1037, 124 S.Ct. 2094, 158 L.Ed.2d 723 (2004) ("[O]ne or more of the predicate acts [in a RICO claim] must not only be the 'but for' cause of the injury, but the proximate cause as well." (citations omitted)); *Mendoza*, 301 F.3d at 1168-72 (concluding that the plaintiffs had satisfied both "statutory" and "constitutional" standing requirements of RICO). Despite some significant overlap,

we address the proximate cause and standing concepts separately.[4]

(i) Proximate Cause

It is well-established that RICO plaintiffs must prove proximate causation in order to recover. *Anza v. Ideal Steel Supply Corp.*, ___ U.S. ___, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006); *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992); *Cox*, 17 F.3d at 1399 (citations omitted). *Anza* makes clear that courts should scrutinize proximate causation at the pleading stage and carefully evaluate whether the injury pled was proximately caused by the claimed RICO violations. *See Anza,* 126 S.Ct. at 1997.

More importantly, in *Anza*, the United States Supreme Court instructed that "[w]hen a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's

---

[4] As the Sixth Circuit aptly explained,

> the two concepts overlap and that is particularly true in the context of civil RICO claims. As a general matter, they overlap because a plaintiff who lacks standing to vindicate a derivative injury also will be unable to show proximate cause. And as a matter of RICO law, the two concepts overlap because they both grow out of the "by reason of" limitation in RICO-namely, the requirement that claimants establish that their injury was "by reason of" a RICO predicate act violation. The "by reason of" limitation, in other words, bundles together a variety of "judicial tools," some of which are traditionally employed to decide causation questions and some of which are employed to decide standing questions. *Holmes,* 503 U.S. at 268, 112 S.Ct. [at 1318] ("Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts. At bottom, the notion of proximate cause reflects ideas of what justice demands, or of what is administratively possible and convenient.") (quotation omitted). . . .

Trollinger, 370 F.3d at 613.

injuries." *Anza*, 126 S.Ct. at 1998. This central question stems from the Supreme Court's earlier decision in *Holmes*, which examined "the common-law foundations of the proximate-cause requirement" and specifically the "demand for some direct relation between the injury asserted and the injurious conduct alleged." *Anza*, 126 S.Ct. at 1996 (quoting *Holmes*, 503 U.S. at 269, 112 S.Ct. at 1318). Although *Anza* does not require plaintiffs to show that the injurious conduct is the sole cause of the injury asserted, *Anza* does emphasize that in RICO cases there must be "some direct relation" between the injury alleged and the injurious conduct in order to show proximate cause. *Id.*[5]

In evaluating whether the requisite causal connection exists, *Anza* also instructs that courts should consider the "motivating principle[s]" behind the directness component of the proximate-cause standard in RICO cases. "One motivating principle is the difficulty that can arise when a court attempts to ascertain the damages caused by some remote action." *Anza*, 126 S.Ct. at 1997. Stated another way, "the less direct an injury is, the more difficult it becomes to ascertain the amount of plaintiff's damages attributable to the violation, as distinct from other, independent factors." *Holmes*, 503 U.S. at 269, 112 S.Ct. at 1318. This remoteness concern is heightened when RICO suits are brought by economic competitors seeking damages for lost sales because those types of claims, "if left unchecked, could blur the line

---

[5] *Anza* also explains that "Congress modeled § 1964(c) [in the RICO statute] on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act." 126 S.Ct. at 1996 (quotation marks and citation omitted). In both federal RICO and federal antitrust cases, "proximate cause is not . . . the same thing as a sole cause," and it is enough for the plaintiff to plead and prove that the defendant's tortious or injurious conduct was a "substantial factor in the sequence of responsible causation." *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1399 (11th Cir.1994) (RICO), *modified on other grounds* by 30 F.3d 1347 (11th Cir.1994).

between RICO and the antitrust laws." *Anza,* 126 S.Ct. at 1998.

Another consideration is the risk of duplicative recoveries. "The requirement of a direct causal connection is especially warranted where the immediate victims of an alleged RICO violation can be expected to vindicate the laws by pursuing their own claims." *Anza*, 126 S.Ct. at 1998. As also aptly expressed in *Holmes*, "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Holmes*, 503 U.S. at 269-70, 112 S.Ct. at 1318.

Turning back to this case, we conclude that the plaintiffs have alleged sufficient proximate cause to withstand defendant Mohawk's motion to dismiss. According to their complaint, Mohawk has hired illegal workers "[i]n an effort to keep labor costs as low as possible." Furthermore, "Mohawk's employment and harboring of large numbers of illegal workers has enabled Mohawk to depress wages and thereby pay all of its hourly employees, including legally employed workers who are members of the class, wages that are lower than they would be if Mohawk did not engage in this illegal conduct." Again, the complaint alleges that "Mohawk's widespread employment and harboring of illegal workers has substantially and unlawfully increased the supply of workers from which Mohawk makes up its hourly workforce. This unlawful expansion of the labor pool has permitted Mohawk to depress the wages that it pays all its hourly employees . . ." The plaintiffs also allege that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power" and that they "were injured by direct and proximate reason of Mohawk's illegal conduct."

Given these allegations, which we must assume are true at this Rule 12(b)(6) stage of the litigation, it is clear that the plaintiffs have alleged a sufficiently direct relation between their claimed injury and the alleged RICO violations. In short, according to the complaint, Mohawk's widespread scheme of knowingly hiring and harboring illegal workers has the purpose and direct result of depressing the wages paid to the plaintiffs. Simply put, wholesale illegal hiring depresses wages for the legal workers in north Georgia where Mohawk is located. According to plaintiffs, Mohawk's illegal conduct had a substantial and direct effect on wages that Mohawk pays to legal workers. *See DeCanas v. Bica*, 424 U.S. 351, 356-57, 96 S.Ct. 933, 937, 47 L.Ed.2d 43 (1976) (explaining that "acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens").[6] While *DeCanas* is not a RICO case, plaintiffs point out that the Supreme Court has already recognized a direct correlation between illegal hiring and lower wages.

In response, Mohawk asserts that other economic factors contribute to the plaintiffs' wages, that illegal hiring is just one of myriad factors affecting wages, and that therefore plaintiffs have not satisfied *Anza*'s proximate-cause requirements. However, plaintiffs persuasively reply that Mohawk's argument ignores that Mohawk's conduct has grossly distorted those normal market forces by employing literally *thousands* of illegal, undocumented aliens at its manufactur-

---

[6] The Supreme Court quoted this same point in *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 892-93, 104 S.Ct. 2803, 2809, 81 L.Ed.2d 732 (1984) (quoting same, and adding that a "primary purpose in restricting immigration is to preserve jobs for American workers; immigrant aliens are therefore admitted to work in this country only if they 'will not adversely affect the wages and working conditions of the workers in the United States similarly employed.'" (citation omitted)).

ing facilities in north Georgia, thus depriving plaintiffs of "business relations unhampered by schemes prohibited by the RICO predicate statutes." Plaintiffs submit that their complaint focuses on only what is happening in the particular narrow labor market that Mohawk dominates in north Georgia. We agree with plaintiffs that their complaint alleges a sufficiently direct injury to satisfy *Anza* and *Holmes,* especially given the recognition of a direct correlation between illegal hiring and lower wages.

More importantly, as plaintiffs point out, in both *Holmes* and *Anza,* the Supreme Court emphasized that dismissal was appropriate because a more direct victim could bring suit. For example, the *Anza* plaintiff alleged that National Steel Supply, a competitor, had stopped paying sales taxes to the New York tax authority, submitted fraudulent documents to the tax authority, and used its tax savings to lower prices. The plaintiff sued for treble damages for sales lost to National. The Supreme Court concluded that New York, which lost the tax revenue due to National's fraudulent conduct, was the direct victim who could bring suit and not the plaintiff. *Anza,* 126 S.Ct. at 1997. Indeed, the state of New York could "be expected to pursue appropriate remedies." *Id.* at 1998. National's decision to lower prices to its customers and win sales from the plaintiff was "entirely distinct from the alleged RICO violation" of mail and wire fraud as to taxes owed to the New York tax authority. *Id.* at 1997.

Likewise, in *Holmes*, the plaintiff's injury was merely derivative of a prior injury to third parties (broker dealers) who had filed their own suit. *Holmes*, 503 U.S. at 271, 273, 112 S.Ct. at 1319-20; *see also Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 541, 103 S.Ct. 897, 910, 74 L.Ed.2d 723 (1983) (identifying alternative plaintiffs with more direct claims).

The concerns expressed in *Anza* and *Holmes* are not present in this case. There is no more direct injured party who

could bring suit. Mohawk posits the United States as the only other victim because of its interest in enforcing immigration laws. But as plaintiffs aptly point out, the United States is responsible for all federal criminal laws which includes RICO's other predicate acts. Under Mohawk's theory, the United States would arguably be the most direct victim of all RICO predicate, criminal acts. Congress, however, criminalized the employment of illegal workers in part to protect legal workers. It is consistent with civil RICO's purposes-to expand enforcement beyond federal prosecutors with limited public resources-to turn victims (here, Mohawk's legal workers) into prosecutors as private attorneys general seeking to eliminate illegal hiring activity by their *own* employer. *See Rotella v. Wood*, 528 U.S. 549, 557, 120 S.Ct. 1075, 1082, 145 L.Ed.2d 1047 (2000) (acknowledging that the very "object of civil RICO is . . . to turn [victims] into prosecutors, private attorneys general dedicated to eliminating racketeering activity" (quotation marks and citation omitted)); *see also Reiter v. Sonotone Corp.*, 442 U.S. 330, 344, 99 S.Ct. 2326, 2333, 60 L.Ed.2d 931 (1979) (noting that private antitrust suits "provide a significant supplement to the limited resources available at the Department of Justice").

Anza's concern about speculative damages, "intricate, uncertain injuries," and unwieldy apportionment are not implicated in this case because plaintiffs allege an injury fundamentally different from that in *Anza*. The plaintiff in *Anza* was a competitor suing for damages for lost opportunity or lost sales. In contrast, plaintiffs are Mohawk's own employees who seek to recover the diminution in wages they receive directly from Mohawk. Further, *Anza*'s concern about blurring the line between RICO and antitrust laws is wholly missing here.

We also recognize that Mohawk asserts that the cause of plaintiffs' alleged harms is a set of actions (paying lower wages) "entirely distinct" from the alleged RICO violation

(hiring illegal workers). We disagree. As noted earlier, it has long been recognized that hiring illegal workers on substandard wage terms depresses the wage scales of legal workers. Moreover, plaintiffs are not suing about the hiring of illegal workers on the west coast depressing the wages of legal workers on the east coast. Rather, plaintiffs' complaint is a narrow one about a single employer's-Mohawk's-hiring of thousands of illegal workers at its manufacturing facilities in north Georgia depressing the wages of legal workers of the same employer, Mohawk, at the same manufacturing facilities in the same limited geographical area. Accordingly, under the particular factual circumstances of this case, we conclude that plaintiffs' complaint satisfies the direct relationship requirement imposed by *Holmes* and *Anza*'s interpretation of the "by reason of" language in the federal RICO statute.

Our conclusion is consistent with the two other circuits to have addressed this proximate cause issue in RICO decisions involving schemes to depress wages of legal workers by widespread hiring of illegal workers. *See Trollinger*, 370 F.3d at 619; *Mendoza*, 301 F.3d at 1171-72.

In *Trollinger*, the Sixth Circuit considered a situation in which former Tyson employees at a poultry processing plant sued their former employer under RICO, alleging that the use of illegal workers permitted the employer to lower wages via the collective-bargaining agreement with the union representing the employees. The Sixth Circuit, reviewing the district court's dismissal of the employees' complaint under Rule 12(b)(6), determined that "at this preliminary stage in the proceeding" it could not conclude that there was no likelihood of success on the merits. *Id.* at 619. The Sixth Circuit explained that it remained possible that the legal-worker plaintiffs might prove the following allegations in their complaint:

> (1) that Tyson hired sufficient numbers of illegal aliens to impact the legal employees' wages; (2) that each

> additional illegal worker hired into the bargaining unit by Tyson has a measurable impact on the bargained-for wage-scale; (3) that the illegal immigrants allegedly brought into this country through Tyson's efforts allowed Tyson not to compete with other businesses for unskilled labor; and (4) that Tyson's legal workers did not "choose" to remain at Tyson for less money than other businesses offered, but had no choice in the matter given the hiring needs of the other businesses in the area and the influx of illegal immigrants at Tyson's facilities. While Tyson's proximate-cause argument may well carry the day at the summary-judgment stage, it requires more assistance than the complaint alone provides.
>
> One other circuit has reached the same result on somewhat similar facts . . . *Mendoza* . . .

Trollinger, 370 F.3d at 619.[7]

Although the plaintiffs' evidence in this case may not ultimately prove the proximate-cause requirement, we conclude that the plaintiffs' complaint states a sufficiently direct relation between their alleged injury and Mohawk's alleged unlawful predicate acts to withstand Mohawk's motion to dismiss. Consequently, we join the Sixth and Ninth Circuits in concluding that employees such as the ones in this case have alleged sufficient proximate cause to proceed with their RICO claims.

---

[7] As noted earlier, in *Mendoza*, the Ninth Circuit was faced with a similar suit in which legally documented agricultural workers sued fruit growers under RICO alleging that the growers depressed wages by hiring illegal-immigrant workers. 301 F.3d at 1166. Under almost the exact same legal theory as advanced in this case, the *Mendoza* Court concluded that the plaintiffs' "causation allegations are sufficient at this stage." *Id.* at 1172.

(ii) Statutory Standing

Lastly, we address RICO's statutory standing limitation that also grows out of the "by reason of" limitation in § 1964(c). "[T]he test for RICO standing is whether the alleged injury was directly caused by the RICO violation, not whether such harm was reasonably foreseeable." *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 908 (11th Cir.1998); *see also Sedima*, 473 U.S. at 496-97, 105 S.Ct. at 3285 ("[T]he plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation" and the plaintiff's damages must "flow from the commission of the predicate acts."); *Green Leaf Nursery*, 341 F.3d at 1307 (stating that plaintiffs must show a "direct relation between the injury asserted and the injurious conduct" and that we ask "whether the alleged conduct was 'aimed primarily' at a third party" (quotation marks and citations omitted)); *Bivens*, 140 F.3d at 906 (concluding that a party whose alleged injuries result from "the misfortunes visited upon a third person by the defendant's acts lacks standing to pursue a claim under RICO" (quotation marks and citation omitted)); *Pelletier v. Zweifel*, 921 F.2d 1465, 1497 (11th Cir.1991) (stating that the plaintiff has RICO standing if he shows "a causal connection between his injury and a predicate act").[8] Thus, we must evaluate whether the plaintiffs' injury is sufficiently direct to give plaintiffs standing to sue for Mohawk's alleged RICO violations.

Both the Sixth and Ninth Circuits have expressly concluded that legal workers have sufficiently direct injuries for RICO standing in similar cases. *Trollinger*, 370 F.3d at 615-

[8] This Court has more often evaluated the "by reason of" requirement primarily as part of its proximate-cause analysis, as opposed to the distinct concept of standing. However, despite significant overlap, we must also examine whether the plaintiffs' injury is sufficiently direct to permit standing.

18; *Mendoza*, 301 F.3d at 1170. The Ninth Circuit's *Mendoza* decision is particularly well-reasoned and instructive on the statutory standing issue.

As mentioned earlier, the *Mendoza* plaintiffs were legal workers who claimed that the purpose and result of the defendants' scheme of hiring undocumented immigrants was to depress the wages of legally documented employees. The Ninth Circuit concluded that the plaintiffs had statutory standing because "we are unable to discern a more direct victim of the illegal conduct." *Mendoza*, 301 F.3d at 1170. The Ninth Circuit explained:

> The documented employees here do not complain of a passed-on harm. They allege that the scheme had the purpose and direct result of depressing the wages paid to them by the growers. Thus, as the district court correctly determined, "plaintiffs have stated a claim that they are the direct victims of the illegal hiring scheme."
>
> ...
>
> We also note that the undocumented workers cannot "be counted on to bring suit for the law's vindication." As the district court noted, the fact that RICO specifically provides that illegal hiring is a predicate offense indicates that Congress contemplated the enforcement of the immigration laws through lawsuits like this one.

Id. (internal citations omitted). The Ninth Circuit further stated that the workers must be allowed to make their case through presentation of evidence, including experts who will testify about the labor market, the geographic market, and the effects of the illegal scheme. Questions regarding the relevant labor market and the growers' power within that market are exceedingly complex and best addressed by economic experts and other evidence at a later stage in the proceedings.

Id. at 1171.

Plaintiffs' complaint clearly alleges that Mohawk has engaged in widespread and knowing hiring and harboring of illegal aliens with the express purpose and direct result of lowering the wages of legal workers. For example, the complaint alleges that "[o]ne purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power." The plaintiffs also allege that "[t]he acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce." Furthermore, the plaintiffs "were injured by direct and proximate reason of Mohawk's illegal conduct." Given this stage of the litigation, we conclude that the plaintiffs have sufficiently alleged that Mohawk's illegal conduct was aimed primarily at them. Consequently, the district court correctly denied Mohawk's 12(b)(6) motion as it relates to the plaintiffs' federal civil RICO claim.

III. STATE LAW RICO

Under the Georgia RICO statute, "[i]t is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." O.C.G.A. 16-14-4(a). Unlike federal civil RICO, the Georgia RICO statute does not require proof of an "enterprise." *Cobb County v. Jones Group, P.L.C.*, 218 Ga.App. 149, 460 S.E.2d 516, 520-21 (1995). Rather, under Georgia RICO, the plaintiffs need only establish racketeering activity; that is, "a plaintiff must show that the defendant committed predicate offenses (set forth in O.C.G.A. § 16-14-3(9)) at least twice." *Id.* at 521 (quotation marks and citation omitted).

With regard to their state-law RICO claim, the plaintiffs rely on 18 U.S.C. § 1546 (relating to the fraud and misuse of visas, permits, and other documents) for their predicate

offenses.[9] Despite being limited to § 1546, the plaintiffs have alleged sufficiently numerous violations to satisfy the racketeering activity requirement under Georgia state law. In fact, according to the complaint, "Mohawk has committed hundreds, probably thousands, of violations of . . . 18 U.S.C. § 1546 as part of its pattern of racketeering activity."

There are, however, two issues under the Georgia RICO statute that warrant further discussion: (1) whether a corporation is a "person" who may be sued for purposes of the Georgia RICO statute; and (2) whether the plaintiffs have sufficiently alleged proximate cause to have standing to bring a Georgia RICO suit.

A. Whether Corporations May be Sued Under Georgia RICO

The Georgia Supreme Court recently answered the precise question of whether a corporation may be sued under the Georgia RICO statute. *See Williams Gen. Corp. v. Stone*, 280 Ga. 631, 632 S.E.2d 376 (2006). The Georgia Supreme Court noted that the prohibitions in the Georgia RICO Act apply to "any person" under O.C.G.A. § 16-14-4. *Williams*, 280 Ga. at 631, 632 S.E.2d at 377. The term "person," however, is not defined in the definition section of the Georgia RICO Act. *See* O.C.G.A. § 16-14-3 (definition section). The Georgia Supreme Court pointed out that, nonetheless, the Georgia legislature had "set forth the desired application of the term [person] in the definition section promulgated for use in the title [Title 16] which includes the Georgia RICO Act."

---

[9] According to O.C.G.A. § 16-14-3(9)(A)(xxix), "racketeering activity" is defined as "conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)." The only "racketeering activity" contained in 18 U.S.C. § 1961(1)(A), (B), (C), or (D) on which the plaintiffs rely is § 1546. To the extent the plaintiffs attempt to rely on § 1324, as they do with their federal civil RICO claims, such a claim is barred under the Georgia RICO statute because § 1324 is listed as a "racketeering offense" in 18 U.S.C. § 1961(1)(F), and not in subsections (A), (B), (C), or (D).

Williams, 280 Ga. at 631, 632 S.E.2d at 377. The Georgia Supreme Court explained that the definition section for use in Title 16 of the Georgia Code is O.C.G.A. § 16-1-3(12). *Id.* The Georgia Supreme Court then quoted § 16-1-3(12), which provides that "person" includes an individual, a public or private *corporation,* an incorporated association, government, government agency, partnership, or unincorporated association. *Id.* at 632, 632 S.E.2d at 377. Additionally, the Georgia Supreme Court observed that "the definition section of the entire Georgia Code notes that 'person' includes a corporation," citing O.C.G.A. § 1-3-3(14). *Id.* at 632, 632 S.E.2d at 378 (quotation marks omitted). Accordingly, the Georgia Supreme Court concluded that a corporation is subject to and may be sued under Georgia's RICO Act. *Id.* at 631, 632 S.E.2d at 377.

The Georgia Supreme Court in *Williams* also expressly rejected the argument, which Mohawk makes here, that O.C.G.A. § 16-2-22, which places limits on corporate criminal liability, should apply to civil suits which stem from criminal law violations. *Id.* at 632-33, 632 S.E.2d at 378. Instead, the Georgia Supreme Court expressly held that "O.C.G.A. § 16-2-22 does not pertain to civil suits brought under the Georgia civil RICO Act." *Id.* In light of *Williams,* we conclude that Mohawk, a corporation, may be sued under the Georgia RICO statute.[10] We now turn to the next question of standing.

B. Standing to Pursue State-Law RICO Claims

As with Federal RICO claims, under Georgia's RICO statute, "[a]ny person who is injured *by reason of* any violation of" Georgia's RICO statute "shall have a cause of action for three times the actual damages sustained . . ."

---

[10] In interpreting a state law, federal courts apply the decisions of that state's highest court. *See CSX Transp., Inc. v. Trism Specialized Carriers, Inc.*, 182 F.3d 788, 789 (11th Cir.1999).

O.C.G.A. § 16-14-6(c) (emphasis added). "[B]ecause the state RICO act is modeled upon and closely analogous to the federal RICO statute," Georgia courts "look to federal authority" in determining RICO standing. *Maddox v. So. Eng'g Co.*, 231 Ga.App. 802, 500 S.E.2d 591, 594 (1998) (quotation marks and citation omitted). We already have concluded that the plaintiffs have alleged sufficient injury to pursue their federal RICO claims, and accordingly, we conclude that they have alleged a sufficient injury to pursue their state RICO claims as well. Although under Georgia law the plaintiffs are limited to predicate acts arising out of 18 U.S.C. § 1546, we conclude that the plaintiffs' allegations are neither indirect nor too remote to satisfy Georgia's proximate-cause requirement under state-law RICO. *See Maddox,* 500 S.E.2d at 594 ("In short, the language 'by reason of' imposes a proximate causation requirement on the plaintiff." (citation omitted)); *id.* (A plaintiff "must show a causal connection between his injury and a predicate act." (citation omitted)).[11]

IV. UNJUST ENRICHMENT

The plaintiffs' complaint claims that Mohawk's illegal conduct permits it "to reap substantial wage savings" because Mohawk pays plaintiffs lower wages than it would otherwise be forced to pay. Therefore, according to the plaintiffs' complaint, Mohawk has been unjustly enriched under state law. Plaintiffs also claim that Mohawk has been unjustly enriched because the hiring of illegal aliens has led to a reduced number of worker's-compensation claims. Both of plaintiffs' state-law unjust-enrichment claims fail.

---

[11] Plaintiffs also seek injunctive relief under the Georgia RICO Act which allows any "aggrieved person" to sue for injunctive relief, without requiring an injury "by reason of" the illegal conduct. *Compare* O.C.G.A. § 16-14-6(b) *with* O.C.G.A. § 16-14-6(c). Thus, we need not discuss *Anza* and Mohawk's proximate-cause arguments as to plaintiffs' claims for injunctive relief under the Georgia RICO Act.

Here, the plaintiffs were all paid an agreed-upon wage. In essence, the plaintiffs have a contract to work for the defendant and were paid the agreed-upon wage. In Georgia, "[u]njust enrichment is an equitable concept and applies when as a matter of fact there is no legal contract . . ." *St. Paul Mercury Ins. Co. v. Meeks*, 270 Ga. 136, 508 S.E.2d 646, 648 (1998) (quotation marks and citation omitted); *see Bonem v. Golf Club of Ga., Inc.*, 264 Ga.App. 573, 591 S.E.2d 462, 467-68 (2003). In this case, there was a legal contract as a matter of fact (i.e., if the plaintiffs were not paid, they could sue for breach of the employment contract). *See, e.g., SurgiJet, Inc. v. Hicks*, 236 Ga.App. 80, 511 S.E.2d 194, 195 (1999); *Brazzeal v. Commercial Cas. Ins. Co.*, 51 Ga.App. 471, 180 S.E. 853, 853 (1935). Therefore, there can be no unjust enrichment. Consequently, the plaintiffs' unjust-enrichment claim as it related to Mohawk's purported savings from lower wages should have been dismissed.

As for plaintiffs' claims that hiring illegal workers resulted in fewer worker's-compensation claims, there is no reasonable allegation that this fact, even if true, is connected to the plaintiffs receiving lower wages. To put it another way, the fact that Mohawk may have increased profits by lowering the number of worker's-compensation claims it paid is not related to what wages Mohawk paid the plaintiffs. Consequently, the district court correctly determined that the plaintiffs did not have standing to assert this claim.

V. CONCLUSION

For all the above reasons, we conclude that the district court properly denied Mohawk's Rule 12(b)(6) motion as it related to both the plaintiffs' federal and state RICO claims. Furthermore, the district court properly dismissed the plaintiffs' unjust-enrichment claim as it related to worker's compensation. However, the district court should have also

dismissed the plaintiffs' unjust-enrichment claim as it related to the agreed-upon wages that plaintiffs received.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

APPENDIX B

SUPREME COURT OF THE UNITED STATES

No. 05-465.

MOHAWK INDUSTRIES, INC.,
Petitioner,

v.

SHIRLEY WILLIAMS, *et al.*

Dec. 12, 2005

Case below, 411 F.3d 1252.

Petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit granted limited to Question 1 presented by the petition.

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. 05-465

MOHAWK INDUSTRIES, INC.,
Petitioner,

v.

SHIRLEY WILLIAMS *et al.*

June 5, 2006

PER CURIAM

The writ of certiorari limited to Question 1 presented by the petition, granted at 546 U.S. ___, 126 S.Ct. 830, 163 L.Ed.2d 705 (2005), is dismissed as improvidently granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Anza v. Ideal Steel Supply Corp.*, ___ U.S., 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006).

It is so ordered.

APPENDIX D

UNITED STATES DISTRICT COURT
N.D. GEORGIA
ROME DIVISION

No. CIV.A.4:04-CV-0003-H

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, and LORA SISSON, individually and on behalf of a class,
Plaintiffs,

v.

MOHAWK INDUSTRIES, INC.,
Defendant.

April 12, 2004

ORDER

MURPHY, *District Judge.*

This is a class action alleging violations of the federal and Georgia Racketeer Influenced and Corrupt Organizations Acts ("RICO"). The case is before the Court on Defendant's Motion to Dismiss [25].

I. Background

A. The Parties

Plaintiffs are current and former hourly employees of Defendant who claim that Defendant's alleged employment and harboring of illegal aliens has depressed their wages. (Compl.¶ 1.) Plaintiffs Gale Pelfrey, Shirley Williams, Bonnie Jones, and Lora Sisson are citizens of Georgia and reside in the Northern District of Georgia. (*Id.* ¶¶ 5-8.) Plaintiffs Pelfrey, Williams, and Sisson are former hourly employees of Defendant. (Compl.¶¶ 5, 6, 8.) Plaintiff Jones is currently an

hourly employee of Defendant. (*Id.* ¶ 7.) Plaintiffs Pelfrey, Williams, Sisson, and Jones are eligible to be employed in the United States. (*Id.* ¶¶ 5-8.) Plaintiffs seek certification of a class consisting of all current and former employees of Defendant legally authorized to be employed in the United States who are or have been employed in hourly wage positions at any time since January 5, 1999, to the present (the "Class").[1] (*Id.* ¶ 39.)

Defendant is the second largest carpet and rug manufacturer in the United States. (Compl.¶ 2.) Defendant employs approximately 31,780 persons, most of whom are employed in Northwest Georgia. (*Id.*) Defendant owns or leases at least twenty-six facilities in Georgia. (*Id.*) Defendant is a Delaware corporation with its principal place of business in Calhoun, Georgia. (*Id.* ¶ 9.)

B. Plaintiffs' Allegations

Plaintiffs allege that Defendant has engaged in illegal hiring of persons who are not eligible for employment in the United States in an effort to keep costs of labor as low as possible. (Compl.¶ 14.) According to Plaintiffs, Defendant has accepted for employment and continues to employ workers that it knew or had reason to know were not authorized to work in the United States. (*Id.* ¶ 15.) Plaintiffs allege that Defendant has knowingly and recklessly accepted false documents or documents that do not match the identity of the person presenting the documents as proof of eligibility for employment. (*Id.* ¶ 16.) Additionally, Plaintiffs claim that Defendant has knowingly and recklessly accepted proof of eligibility for employment documents reflecting successive different names for a single person. (*Id.* ¶¶ 17, 19.) Indeed,

---

[1] Plaintiffs' Complaint also sets forth a number of allegations relating to the certification of a class of Defendant's former and current hourly employees. (*See* Compl. ¶¶ 39-53.) Those allegations are not relevant to the instant Motion.

Plaintiffs allege that when some illegal workers have informed Defendant that they would return to their countries of origin, supervisors employed by Defendant have encouraged those employees to return to the United States and illegally reapply for work at Defendant. (*Id.* ¶ 18.)

Plaintiffs claim that in an effort to conceal Defendant's employment and harboring of illegal workers, Defendant's employees have destroyed eligibility documents indicating that workers have employed different names and identification papers. (Compl.¶ 20.) Furthermore, according to Plaintiffs, Defendant's employees and supervisors have stated that they are aware that illegal workers can easily obtain false identification and work authorization documents. (*Id.* ¶ 21.)

Plaintiffs claim that Defendant's employees have traveled to the United States border to recruit illegal aliens. (Compl. ¶ 22.) According to Plaintiffs, those employees and other persons then transported the illegal aliens to North Georgia for employment at Defendant's facilities. (*Id.*) Plaintiffs allege that Defendant has provided incentive to its employees and other recruiters by paying for locating illegal workers that Defendant eventually employs and harbors. (*Id.*) Plaintiffs contend that Defendant's employees and recruiters have provided housing for illegal workers when the workers arrived in North Georgia, and have aided those illegal workers in finding employment with Defendant. (*Id.* ¶ 23.)

Occasionally, Defendant audits its workforce and discovers illegal workers are employed with Defendant. (Compl.¶ 24.) According to Plaintiffs, Defendant has not increased the frequency of such audits despite the fact that the audits reveal that a large number of illegal workers are employed at Defendant. (*Id.*) Furthermore, Plaintiffs allege that when Defendant terminates an illegal worker after discovering that the illegal worker is not authorized to work in the United States, the worker frequently returns to work under a different name. (*Id.* ¶ 25.) Plaintiffs claim that this practice, termed

"recycling," is widespread at Defendant. (*Id.* ¶ 26.) According to Plaintiffs, Defendant has been further put on notice of illegal workers because many illegal workers artificially inflate their claimed exemptions, thus avoiding paying federal income tax. (*Id.* ¶ 32.)

Plaintiffs allege that law enforcement authorities have raided Defendant's facilities in search of illegal workers. (Compl.¶ 27.) Plaintiffs claim that when such raids have occurred, illegal workers have hidden in barrels or other containers or have fled. (*Id.*) According to Plaintiffs, the number of illegal workers who run or hide has put Defendant on notice that it employs a large number of illegal workers. (*Id.*) Moreover, Plaintiffs contend that Defendant's employees and supervisors have assisted illegal workers in evading the law enforcement authorities. (*Id.* ¶ 28.)

Plaintiffs state that law enforcement authorities have arrested some illegal workers at Defendant's facilities. (Compl.¶ 29.) Plaintiffs further allege that law enforcement authorities have discovered undocumented aliens in possession of paychecks issued by Defendant or identification badges and fraudulent identification documents. (*Id.* ¶ 30.)

According to Plaintiffs, Defendant's supervisors have stated that illegal workers are preferable because those workers are more tolerant of working conditions and do not submit claims for workers' compensation. (Compl.¶ 31.) Plaintiffs contend that because many of Defendant's workers are undocumented aliens, Defendant knows that those workers are beholden to Defendant, and thus are unlikely to complain about working conditions or file workers compensation claims. (*Id.* ¶¶ 36-37.) Consequently, Plaintiffs believe that Defendant saves a considerable amount of money by employing undocumented aliens. (*Id.* ¶ 37.)

According to Plaintiffs, Defendant's practice of employing and harboring large numbers of illegal workers has allowed

Defendant to depress wages; consequently, the wages paid to hourly employees, including the legally employed hourly employees who are members of the Class, are lower than those wages would be if Defendant did not employ and harbor illegal workers. (Compl.¶ 33.) Plaintiffs allege that Defendant employs tens of thousands of hourly workers in North Georgia (*id.* ¶ 34), and Defendant's widespread employment and harboring of illegal workers has substantially increased the supply of workers from which Defendant hires its hourly workers (*id.* ¶ 35). Plaintiffs contend that because of the increased size of the labor pool, Defendant has depressed the wages it pays to all of its hourly employees, including members of the Class. (*Id.*) In other words, Plaintiffs claim that Defendant had only hired persons legally authorized to work in the United States, Defendant would have had to pay higher wages to Plaintiffs and the members of the Class. (*Id.*) Thus, according to Plaintiffs, as a direct and proximate result of Defendant's employment and harboring of illegal workers, the wages that Plaintiffs and the members of the Class have earned have been depressed.

C. Plaintiffs' RICO Claims

1. Pattern of Racketeering Activity

Plaintiffs first allege that Defendant is engaged in an ongoing pattern of racketeering activity as defined by 18 U.S.C.A. § 1961(5) & (8). (Compl.¶¶ 54, 56.) According to Plaintiffs, Defendant has engaged in racketeering activity, namely, an open and ongoing pattern of violations of Section 274 of the Immigration and Nationality Act, 8 U.S.C.A. § 1324(a), more than twice, and the most recent occurrence took place within ten years after the commission of a prior act of racketeering activity. (*Id.* ¶ 55, 57, 58.) In particular, Plaintiffs allege that Defendant has violated and continues to violate: (1) 8 U.S.C.A. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire[ ] for employment at least 10 individuals with actual knowledge that the individuals are

aliens" during a twelve month period (*id.* ¶ 59); (2) 8 U.S.C.A. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal[ ], harbor[ ] or shield from detection, or attempt[ ] to conceal, harbor or shield from detection" aliens that have illegally entered the United States (*id.* ¶ 60); and (3) 8 U.S.C.A. § 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage[ ] or induce[ ] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law" (*id.* ¶ 61). Plaintiffs contend that each violation of 8 U.S.C.A. § 1324 constitutes an act of "racketeering activity" as defined by 18 U.S.C.A. § 1961(1)(F). (*Id.* ¶ 62.)

According to Plaintiffs, the "racketeering activity" also includes Defendant's open and ongoing violations of 18 U.S.C.A. § 1546(a) by knowingly accepting various false identification documents and other false documents indicating authorization for legal employment, and Defendant's continued violations of 18 U.S.C.A. § 1546(b) by using such documents to fill out I-9 forms. (Compl.¶¶ 63-64.) Plaintiffs allege that each violation of 18 U.S.C.A. § 1546 constitutes an act of "racketeering activity" as defined by 18 U.S.C.A. § 1961(1)(B) as well as O.C.G.A. § 16-14-3(9)(A)(xxix). (*Id.* ¶¶ 65-66.)

Plaintiffs claim that the acts of Defendant's racketeering activity have the same or similar methods of commission in that those acts involve the knowing employment of illegal workers, the concealment, harboring, and shielding from detection of illegal workers, and the acceptance or use of fraudulent documents in connection with the hiring of illegal workers. (Compl.¶ 67.) According to Plaintiffs, the acts of racketeering activity have the same or similar objective—*i.e.* the reduction of wages paid to Defendant's workforce. (*Id.* ¶ 68.) Plaintiffs allege that the victims of those acts of racketeering activity are the same or similar. (*Id.* ¶ 69.)

Plaintiffs also contend that the distinguishing characteristics of the acts of racketeering activity include the involvement of Defendant, illegal workers, and other third parties who assist in the recruitment and transportation of undocumented aliens. (*Id.* ¶¶ 70, 76-84.)

According to Plaintiffs, those acts of racketeering activity have occurred over a long period of time, and have become a part of Defendant's regular way of doing business. (Compl.¶¶ 71-73.) Plaintiffs assert that Defendant has committed hundreds, and perhaps thousands, of violations of 8 U.S.C.A. § 1324 and 18 U.S.C.A. § 1546 as part of its racketeering activity. (*Id.* ¶ 74.) Indeed, Plaintiffs claim that Defendant's racketeering activity has been so pervasive that illegal workers currently constitute a majority of the workforce in many of Defendant's facilities in North Georgia. (*Id.* ¶ 75.)

2. Enterprise

Plaintiffs also allege that Defendant has engaged in its pattern of racketeering activity through its participation in an association-in-fact enterprise, as defined by 18 U.S.C.A. § 1961(4), with third party employment agencies and other recruiters who supply Defendant with illegal workers. (Compl.¶¶ 76, 79.) Plaintiffs claim that one such recruiter is Temporary Placement Services ("TPS"), which has a formal relationship with Defendant in that TPS employs illegal workers and then loans those workers to Defendant for a fee. (*Id.*) According to Plaintiffs, other recruiters simply find workers in an area surrounding Brownsville, Texas, and then transport those workers to Georgia. (*Id.*) Plaintiffs contend that TPS and other recruiters also occasionally assist current and prospective illegal workers in assuming new identities. (*Id.*) Plaintiffs allege that those recruiters share the common purpose of obtaining illegal workers for employment with Defendant. (*Id.* ¶ 77.) Additionally, Plaintiffs contend that Defendant participates in the operation and management of

the affairs of the enterprise, which exists for Defendant's benefit. (*Id.* ¶ 78.)

Plaintiffs allege that the enterprise affects interstate commerce in that the illegal workers employed by Defendant travel in international and interstate commerce to reach Defendant's facilities in North Georgia. (Compl.¶¶ 80, 81.) According to Plaintiffs, the enterprise also affects interstate commerce in that the wages of legal workers employed with Defendant are depressed. (*Id.* ¶ 82.) Furthermore, Plaintiffs state that because Defendant is a member of the enterprise and is directly engaged in the production, distribution, and acquisition of goods and services in interstate commerce, the enterprise affects interstate commerce. (*Id.* ¶ 83.)

According to Plaintiffs, Defendant, by accepting and retaining the benefits of the racketeering activity, ratified the conduct of Defendant's managers, employees, and the members of the enterprise who assisted Defendant in committing those acts of racketeering activity. (*Id.* ¶ 84.)

3. Causation

Plaintiffs next allege that Defendant's violations of federal and Georgia RICO proximately caused the wages of Plaintiffs and the members of the Class to be lower than their wages otherwise would have been had the labor pool consisted solely of legally employed workers. (Compl.¶ 85.) Thus, Plaintiffs and the Class claim that they have suffered an injury to their business or property. (*Id.* ¶ 86.) As a result, Plaintiffs contend that Defendant has earned or retained significant funds to which it is not entitled. (*Id.* ¶ 87.)

D. Procedural Background

On January 6, 2004, Plaintiffs filed this lawsuit. Plaintiffs assert the following claims: (1) a claim that Defendant's conduct violates 18 U.S.C.A. § 1962(c) (Compl. ¶¶ 88-92); (2) a claim that Defendant's conduct violates O.C.G.A.

§ 16-14-4(a) (*id.* 93-98); (3) a claim that Defendant's conduct violates O.C.G.A. § 16-14-4(c) (*id.* 99-105); and a claim for unjust enrichment arising under Georgia law (*id.* ¶¶ 106-110). Plaintiffs also seek certification of a class pursuant to Federal Rule of Civil Procedure 23. (*Id.* ¶ 46.)

On February 9, 2004, Defendant filed its Motion to Dismiss pursuant to Federal Rules of Civil Procedure (12)(b)(6) and (12)(b)(1),[2] in which Defendant requests that the Court dismiss Plaintiffs' federal and state RICO claims. Defendant also requests that the Court decline to exercise its pendent jurisdiction over Plaintiffs' state law claims.

II. Standard Governing Motions to Dismiss

The standard for a court to dismiss a claim is whether "it appears beyond doubt that the plaintiff can prove no set of facts to support his claim." *GSW, Inc. v. Long County*, 999 F.2d 1508, 1510 (11th Cir.1993) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). When considering a motion to dismiss, the Court "must accept the allegations in the complaint as true, construing them in the light most favorable to the plaintiffs." *White v. Lemacks*, 183 F.3d 1253, 1255 (11th Cir.1999). However, "[a]s a general rule, conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss." *S. Fla.*

---

[2] Defendant moves to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) only with respect to the elements of 18 U.S.C.A. § 1964(c), which provides the requirements for a plaintiff to have standing to pursue a civil private right of action under RICO. Apparently, some question exists as to whether a motion to dismiss under § 1964(c) is properly characterized as a 12(b)(6) motion (*i.e.* failure to state a claim upon which relief can be granted) or a 12(b)(1) motion (*i.e.* lack of jurisdiction over the subject matter). *See Moore v. PaineWebber, Inc.*, 189 F.3d 165, 169 n. 3 (2d Cir.1999) (applying 12(b)(6), but expressing belief that 12(b)(1) was more appropriate ground for dismissal). The Court appreciates the distinction between 12(b)(1) and 12(b)(6), but concludes that for the purposes of the instant Motion, an analysis under 12(b)(6) suffices.

Water Mgmt. Dist. v. Montalvo, 84 F.3d 402, 408 n. 10 (11th Cir.1996).

III. Discussion

A. Plaintiffs' Federal RICO Claim

18 U.S.C.A. § 1962(c) provides: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C.A. § 1962(c). RICO establishes both civil remedies and criminal penalties for violations of § 1962. *See* 18 U.S.C.A. §§ 1963-1964. In particular, § 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . ." 18 U.S.C.A. § 1964(c). Thus, for a plaintiff to have standing to pursue a private civil cause of action under RICO, the plaintiff must prove the following elements: (1) that the defendant violated § 1962; (2) that the plaintiff sustained an injury to his business or property; and (3) that the violation of § 1962 caused the injury. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir.1991) (citing *O'Malley v. O'Neill*, 887 F.2d 1557, 1560-61 (11th Cir.1989)). Likewise, to prevail on a civil RICO claim under § 1962(c), the plaintiff must show: (1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendant was employed by or associated with the enterprise; (4) that the defendant participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated through a pattern of racketeering activity. *United States v. Starrett*, 55 F.3d 1525, 1541 (11th Cir.1995).

18 U.S.C.A. § 1961 provides definitions for some of the terms used in § 1962(c). "Racketeering activity" includes a number of "predicate acts" that the racketeer must commit for a violation of RICO. 18 U.S.C.A. § 1961(1). Notably, violations of 8 U.S.C.A. § 1324 and 18 U.S.C.A. § 1546, the predicate acts that Plaintiffs allege Defendant committed, are among those predicate acts listed in § 1961(1). 18 U.S.C.A. § 1961(1)(B) & (F). A "pattern of racketeering activity" is defined as at least two acts of racketeering activity that occurred within ten years after the commission of a prior act of racketeering activity. 18 U.S.C.A. § 1961(5); *see Pelletier v. Zweifel*, 921 F.2d 1465, 1496 (11th Cir.1991) ("A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but unrelated predicate acts."). Section 1961 also provides that an "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C.A. § 1961(4). Likewise, a "person" liable under § 1962(c) is defined as "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C.A. § 1961(3).

Defendant contends that the Court should dismiss Plaintiffs' Complaint because: (1) the Complaint does not sufficiently allege the elements of the RICO predicate action; (2) the Complaint fails to identify a legally sufficient RICO enterprise; and (3) Plaintiffs lack standing to assert their RICO claims. The Court addresses each of those arguments in turn.

1. Sufficiency of Pleadings

a. Whether Plaintiffs Failed to Plead Predicate Acts with Particularity

As a threshold matter, the Court addresses Defendant's contention that Plaintiffs' Complaint fails to meet the heightened pleading requirements of Federal Rule of Civil Proce-

dure 9(b). When pleading a RICO action, it is well-settled that where the predicate act sounds in fraud (e.g. mail fraud, wire fraud, or securities fraud), the plaintiff must plead that predicate act with particularity as required by Federal Rule of Civil Procedure 9(b). *Byrne v. Nezhat*, 261 F.3d 1075, 1109-10 (11th Cir.2001) (mail fraud); *Republic of Panama v. BCCI Holdings (Lux.)*, 119 F.3d 935, 949 (11th Cir.1997) (wire fraud); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1380-82 (11th Cir.1997) (mail fraud and wire fraud); *Durham v. Bus. Mgmt. Assocs.*, 847 F.2d 1505, 1511-12 (11th Cir.1988) (securities fraud); *see also* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1251.1 n. 13 (citing cases finding that fraud claims brought under RICO must comply with pleading requirements of Rule 9(b)).

As the United States Court of Appeals for the Eleventh Circuit has not yet addressed whether the heightened pleading requirement of Rule 9(b) applies to RICO causes of action premised on non-fraud predicate acts, some ambiguity exists as to whether the particularized pleading requirements of Rule 9(b) apply in *all* RICO actions. *Compare Taylor v. Bear Stearns & Co.*, 572 F.Supp. 667, 682 (N.D.Ga.1983) (Forrester, J.) ("It seems, however, to this court at least that there are many sound reasons for requiring that, like fraud, [RICO] must be pled with particularity.") *and Helicopter Support Sys., Inc. v. Hughes Helicopters, Inc.*, No. 83-1450-Civ.-T-15, 1984 WL 3238, at *1 (M.D.Fla. June 22, 1984) (same) *with Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 945 F.Supp. 1355, 1380 n. 25 (D.Or.1996) (finding Rule 9(b) inapplicable where predicate acts are extortion and coercion); *and United States v. Int'l Bhd. of Teamsters*, 708 F.Supp. 1388, 1395-96 (S.D.N.Y. 1989) ("This court is not persuaded by the reasoning of the courts that have applied Rule 9(b) to RICO actions not sounding in fraud, and adopts the reasoning of courts that limit the application of Rule 9(b) to fraud based RICO

claims."); *and United States v. Bonanno Organized Crime Family of LaCosa Nostra*, 683 F.Supp. 1411, 1426-27 (E.D.N.Y.1988) (finding "no basis for extending the reach of Rule 9(b) to all RICO cases"). Those courts holding that Rule 9(b) applies in all RICO actions reason such heightened pleading is appropriate in light of the *in terrorem* effect of pleading RICO and in order to put the RICO defendant on notice of the claim against him. *See Taylor*, 572 F.Supp. at 682 ("First, the mere invocation of the statute has such an *in terrorem* effect that it would be unconscionable to allow it to linger in a suit and generate suspicion and unfavorable opinion of the putative defendant unless there is some articulable factual basis which, if true, would warrant recovery under the statute. Second, the concepts within the statute are so nebulous that if the cause of action were only generally pled, a defendant would have no effective notice of a claim showing that the pleader is entitled to relief.")

Plaintiffs urge the Court to find that the appropriate pleading standard for non-fraud RICO predicate activities is the standard provided in Rule 8(e)(1). *See* Fed. R. Civ. Proc. 8(e)(1) ("Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."). Specifically, Plaintiffs contend that the reasoning underlying *Taylor* is inapplicable in light of *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). In *Sedima,* the United States Supreme Court held that a plaintiff in a RICO action need not allege and prove that the defendant had previously been convicted under RICO. 473 U.S. at 492, 105 S.Ct. 3275. In reaching that conclusion, the Supreme Court dismissed the argument that a RICO conviction should be required to pursue a civil RICO action, stating, "[a]s for stigma, a civil RICO proceeding leaves no greater stain than do a number of other civil proceedings." *Id.* Plaintiffs urge the Court to conclude that in light of the foregoing language from *Sedima*, Rule 9(b) is limited to cases that actually involve fraud or

mistake, and does not apply in every case where the defendant claims it is stigmatized.

The Court finds Plaintiffs' reasoning persuasive, and finds that the better approach, and certainly the majority approach, is to apply the liberal pleading standards of Rule 8 to RICO actions involving non-fraud predicate activities. Additionally, the Court notes *Taylor* and *Helicopter Support Sys.* are distinguishable because the predicate activities in those cases were mail fraud and wire fraud, rather than a non-fraud predicate act.[3] Accordingly, the Court finds that where a predicate act does not sound in fraud, the plaintiff asserting a RICO claim need only comply with the general pleading requirements of Rule 8(e)(1), rather than the heightened pleading requirements of Rule 9(b).[4]

Having determined that Rule 9(b) is inapplicable in cases involving non-fraud RICO actions, the Court next addresses Defendant's argument that the predicate acts enumerated in Plaintiffs' Complaint sound in fraud, and must therefore be pled with particularity. In support of its position, Defendant cites to a string of criminal cases where courts referred to the predicate acts alleged in the instant lawsuit as "acts of fraud."

---

[3] In *Helicopter Support Sys.*, the plaintiff also asserted a claim for commercial bribery. *Helicopter Support Sys.* at *1. The court found that the plaintiff failed to show that commercial bribery was a predicate offense under § 1961(1); thus, it was unnecessary to address whether that offense required heightened pleading under Rule 9(b). *Id.*

[4] Defendant's reliance on *Club Car, Inc. v. Club Car Import, Inc.* 276 F.Supp.2d 1276 (S.D.Ga.2003), is misplaced. In that case, the plaintiff was required to plead predicate acts of extortion and mail fraud with particularity simply because Local Rule 9.1 for the United States District Court for the Southern District of Georgia requires such specificity. *See* L.R.S.D. Ga. 9.1 ("All pleadings which allege violations of . . . , RICO, and other similar statutes, whether federal or state, shall specifically state each alleged violation.") This Court, however, has no such provision in its Local Rules. Consequently, the Court does not find *Club Car* applicable in this case.

See, e.g., United States v. Rodriguez-Suazo, 346 F.3d 637 (6th Cir.2003); *United States v. Thiongo*, 344 F.3d 55, 58 (1st Cir.2003); *United States v. Hendricks*, No. 99-4562, 2000 WL 341914, at *2 (4th Cir. Apr.3, 2000); *United States v. Yum*, 776 F.2d 490, 491 (4th Cir.1985). Those cases, however, do not require a finding that the predicate acts based on violations of 8 U.S.C.A. § 1324(a) and 18 U.S.C.A. § 1546 sound in fraud. The cases relied upon by Defendant involve defendants who were charged with making false representations, or conspiring to make false representations, to the federal government. By contrast, Plaintiffs do not allege that Defendant made false representations to Plaintiffs or the government; rather, Plaintiffs allege that Defendant has employed and harbored illegal workers. The predicate acts in this case consequently do not sound in fraud. Because the predicate acts in this case do not sound in fraud, the Court finds that Rule 9(b) is inapplicable to this case. Instead, Plaintiffs need only satisfy the requirements of Federal Rule of Civil Procedure 8.

The Court further notes that it has evaluated the Complaint, and finds that it satisfies the requirements set forth in Rule 8. Accordingly, the Court cannot dismiss the Complaint on the ground that Plaintiffs failed to plead the predicate acts adequately.

b. Whether Plaintiffs Failed to Allege All the Elements Required to Plead a Violation of 8 U.S.C.A. § 1324(a)(3)

Defendant also contends that Plaintiffs have failed to plead sufficiently the violation of 8 U.S.C.A. § 1324(a)(3), one of the predicate acts alleged in the Complaint. Specifically, Defendant claims that the Complaint fails to allege all the required elements of § 1324(a)(3), which provides:

> (A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens

> described in subparagraph (B) shall be fined under Title 18 or imprisoned for not more than 5 years, or both.
>
> (B) An alien described in this subparagraph is an alien who—
>
> (i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and
>
> (ii) has been brought into the United States in violation of [8 U.S.C.A. § 1324(a)].

8 U.S.C.A. § 1324(a)(3). Defendant contends that to plead a violation of § 1324(a)(3) adequately, Plaintiffs must allege that Defendant knowingly hired ten or more aliens and that Defendant *itself* brought those aliens into the United States.

In support of its position, Defendant relies on *System Management, Inc. v. Loiselle*, 91 F.Supp.2d 401 (D.Mass. 2000). The Court, however, does not agree that the holding of *Loiselle* is as limited as Defendant insists. In *Loiselle*, the defendant owner and chief executive officer of a janitorial and custodial services company was sued by two competitor corporations and four former employees. *Loiselle*, 91 F.Supp.2d at 404. The plaintiffs alleged that the defendant had violated RICO by engaging in racketeering activity including "knowingly hiring at least ten individuals with knowledge that they were 'aliens' as described in 8 U.S.C. § 1324(a)(3)(A)." *Id.* at 408. The defendant argued, and the court agreed, that the RICO claim premised on § 1324(a)(3) should be dismissed because the plaintiffs failed to allege "how the aliens entered the country or whether [the defendant] had knowledge of the purpose for which they entered." *Id.* The court reasoned that the language of § 1324(a)(3)(B)(ii) "seems to require, in order for liability to attach, that the aliens have been brought into the country by *an* employer for the purpose of illegal employment." *Id.* In other words, "the Plaintiffs must allege that [the defendant] had knowledge of how the aliens had been brought into the

United States and that they were *brought* into the United States in violation of this employment provision." *Id.* Thus, *Loiselle* holds that simple allegations that the defendant knowingly hired undocumented aliens are insufficient to state a claim under § 1324(a)(3); rather, a plaintiff must additionally allege that the defendant knew that the aliens were brought into the United States for the purpose of illegal employment. *Loiselle,* however, did not hold that the employer *itself* must have brought the aliens into the United States for a claim to arise under § 1324(a)(3). Accordingly, the Court concludes that for a plaintiff to plead a violation of § 1324(a)(3) adequately, the plaintiff must simply allege that the aliens were *brought* into the United States in violation of subsection (a), but there is no requirement that the employer must have brought the aliens into this country.

Turning to the Complaint, the Court concludes that Plaintiffs have pleaded adequately the elements of § 1324(a)(3). Specifically, Plaintiffs have alleged that Defendant has hired illegal workers knowing that those workers were "smuggled or otherwise brought" into the United States illegally. (Compl.¶ 59.) *See Mendoza v. Zirkle Fruit Co.*, No. CS-00-3024-FVS, 2000 WL 33225470, at *4 (E.D.Wash. Sept. 27, 2000) (finding "the plaintiffs have adequately pled a predicate act . . . by alleging that the defendants knew that some of their workers were unlawfully brought into the United States"). Accordingly, the Court denies Defendant's Motion to Dismiss as to this ground.

2. Enterprise

The Court next determines whether the Complaint adequately alleges the existence of a RICO enterprise. Defendant contends that Plaintiffs' Complaint fails as a matter of law to allege that a RICO enterprise existed and that the Court thus must dismiss Plaintiffs' Complaint. Specifically, Defendant claims: (1) that Plaintiffs have not and cannot allege that Defendant participated in the affairs of a RICO enter-

prise, rather than its own affairs, through the alleged immigration law violations; (2) that Plaintiffs have failed to allege a RICO enterprise distinct from Defendant; and (3) that Plaintiffs have failed to allege the existence of a common purpose and unified structure.

As explained *supra* Part III.A., a RICO "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C.A. § 1961(4), and a RICO "person" is "any individual or entity capable of holding a legal or beneficial interest in property," 18 U.S.C.A. § 1961(3). "For the purposes of [§ 1962(c)], the indictment [or complaint] must name a RICO person distinct from the RICO enterprise. The plain language of the statute requires that [those] entities be distinct." *United States v. Goldin Indus., Inc.*, 219 F.3d 1268, 1271 (11th Cir.2000) (hereinafter "*Goldin I*"). The Eleventh Circuit does not require a strict, formal association of participants; rather, "the existence of an enterprise 'is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.'" *United States v. Goldin Indus., Inc.*, 219 F.3d 1271, 1275 (11th Cir.2000) (hereinafter "*Goldin II*") (quoting *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981)). "[T]he definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity requisite to the RICO violation." *Id.; United States v. Elliott*, 571 F.2d 880, 897-98 (5th Cir.1978);[5] *see also United States*

[5] Opinions of the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the Eleventh Circuit, are binding precedent on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209-11 (11th Cir.1981) (en banc).

v. Hawes, 529 F.2d 472, 479 (5th Cir.1976) (recognizing that Congress gave the term "enterprise" a very broad meaning). Indeed, "a RICO enterprise may be an 'amoeba-like' structure or a loose informal association." *Avirgan v. Hull*, 932 F.2d 1572, 1578 (11th Cir.1991) (citing *United States v. Cagnina*, 697 F.2d 915, 921 (11th Cir.1983)).

Notably, the existence of an enterprise is a separate element that the plaintiff must prove—*i.e.* although a pattern of racketeering activity must be shown by pointing to evidence of the requisite number of racketeering acts by participants in the enterprise, such evidence does not necessarily establish the existence of an enterprise. *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524. Indeed, "[t]he 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart form the pattern of activity in which it engages." *Id.* Nevertheless, the Eleventh Circuit recognizes that "under our case law, a RICO enterprise need not possess an 'ascertainable structure' distinct from the associations necessary to conduct the pattern of racketeering activity." *Goldin II*, 219 F.3d at 1274-75 (quoting *United States v. Weinstein*, 762 F.2d 1522, 1537 n. 13 (11th Cir.1985)).

In support of its position that the Complaint fails to allege the existence of an enterprise adequately, Defendant relies heavily on a similar opinion issued by the Seventh Circuit, *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir.2004). In *Baker*, unionized current and former employees of one of the defendant's meat-processing plants filed a class action lawsuit on behalf of all current and former hourly employees at that plant who were authorized to work in the United States. *Baker*, 357 F.3d at 686. Specifically, the complaint in *Baker* alleged that nearly half of the employees at the defendant's plant were aliens who were unauthorized to work legally in the United States. *Id.* The plaintiffs claimed that the defendant turned a blind eye to bogus identification documents, alerted its illegal workers when immigration officials were

about to conduct inspections, and paid recruiters to smuggle captured illegal workers back into the United States for re-employment under pseudonyms. *Id.* at 687. The complaint further alleged that the defendant had arrangements with immigrant welfare organizations, who referred known undocumented aliens to the defendant for employment. *Id.* Plaintiffs alleged that as a result of that activity, wages at the defendant's plant were depressed compared with what the defendant would have had to pay if the labor pool consisted only of persons legally authorized to work in the United States. *Id.*

In affirming the district court's dismissal of the complaint, the Seventh Circuit first concluded that the union representing the plaintiffs was the proper representative with respect to the wages issue rather than the employees individually. The court also concluded that "there [was] another fatal problem in [the] complaint: specification of the 'enterprise.'" *Baker*, 357 F.3d at 691. The complaint alleged that the "enterprise" was the defendant plus the persons and organizations who assisted the defendant in recruitment of illegal workers. The court first noted that the complaint came "perilously close to alleging that [the defendant] plus its agents and employees is the 'enterprise,' a theory that won't fly." *Id.* (citing *Bucklew v. Hawkins, Ash, Baptie & Co.*, 329 F.3d 923, 934 (7th Cir.2003)).

The court also found that the complaint was flawed for failure to identify a common purpose: "it is not altogether clear how this 'association in fact' has a common purpose, an essential ingredient." *Id.* (citing *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524). The court took a conservative reading as to whether the members of the "association in fact," had a common purpose concluding that their goals were divergent because the defendant wanted to pay lower wages, the recruiters wanted to be paid for their recruitment services, and the immigrant welfare organizations wanted to assist mem-

bers of the ethnic group. *Id.* Consequently, the court found that no common purpose existed. *Id.*

Finally, the *Baker* court found that the plaintiffs failed to allege that the defendant operated or managed the purported enterprise through a pattern of racketeering. *Baker*, 357 F.3d at 692. The court explained that the complaint was insufficient because "[t]he nub of the complaint [was] that [the defendant] operate[d] itself unlawfully—it is [the defendant] that supposedly hires, harbors, and pays the unlawful workers, for the purpose of reducing its payroll." *Id.* at 361. Specifically, the court stated that "[the defendant] does not manage or operate some other enterprise by violating [8 U.S.C.A. § 1324]; the complaint does not allege—and on appeal plaintiffs do not seek an opportunity to show—that [the defendant] ha[d] infiltrated, taken over, manipulated, disrupted, or suborned a distinct entity or even a distinct association in fact." *Id.* The Court therefore found that the plaintiffs failed to allege that the defendant operated an enterprise through a pattern of racketeering activity. *Id.*

Turning to the instant case, the Court first considers Defendant's argument that Plaintiffs have failed to allege that Defendant operated or participated in the affairs of an enterprise through a pattern of racketeering activity. Specifically, Defendant contends that Plaintiffs have failed to allege that Defendant, through its allegedly illegal conduct, operated or participated in the affairs of an "association in fact" as opposed to Defendant's own affairs. In support of its position, Defendant points to various paragraphs in the Complaint that allege that Defendant, as opposed to the purported enterprise, harbored and employed illegal workers in order to reduce the cost of its workforce. (*See Compl.* ¶¶ 3, 14, 16-18, 59-61; 63-64, 67.)

In response, Plaintiffs argue that the Complaint alleges that Defendant "participates in the affairs of an enterprise that transcends [Defendant] itself and that consists of [Defendant]

and various other persons and entities." (Def. Br. Resp. at 7 (emphasis deleted).) Specifically, Plaintiffs point to the following language in the Complaint:

> Mohawk has engaged in an open and ongoing pattern of violations of 8 U.S.C. § 1324 and 18 U.S.C. § 1546 during the last five years through its participation in an association-in-fact enterprise with third party employment agencies and other recruiters, including Temporary Placement Services ("TPS"), that supply Mohawk with illegal workers. Each recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment needs by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

(Compl.¶ 76.) Plaintiffs maintain that given the nature of an association-in-fact enterprise, it is to be expected that the defendant will be engaged in the management of its own affairs—what is most important, however, is that the defendant also participates in the affairs of an enterprise.

Defendant correctly asserts that "liability 'depends on showing that the defendants conducted or participated in the conduct of the enterprises's affairs, not just their own affairs.'" *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001) (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993)) (internal quotation omitted) (em-

phasis deleted). The Eleventh Circuit has nevertheless recognized that "the definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate acts." *Goldin II*, 219 F.3d at 1275; *Weinstein*, 762 F.2d at 1537. Here, the Complaint alleges that Defendant participated in the conduct of an enterprise's affairs by paying recruiters for illegal workers and by maintaining a formal relationship with TPS, and that those parties, as an association-in-fact, provided the means for the commission of a number of immigration law violations. Consequently, the Court finds that Plaintiffs' Complaint sufficiently alleges that Defendant operated or participated in the affairs of an enterprise through a pattern of racketeering activity.

The Court next addresses whether Plaintiffs have failed to allege an enterprise distinct from Defendant itself. Although the Complaint clearly alleges that the other members of the alleged enterprise are independent third parties rather than employees or agents of Defendant (Compl.¶ 76.), Defendant urges the Court to follow *Baker,* and to find that the Complaint fails to allege the existence of an enterprise.

At this stage in the litigation, however, the Court need only determine whether the Complaint sufficiently alleges the existence of an enterprise separate from Defendant. After consideration of the allegations in the Complaint, the Court concludes that for the purposes of this Motion to Dismiss, Plaintiffs have adequately alleged that the recruiters are separate and independent entities from Defendant. Whether the third party recruiters are in fact agents of Defendant is a factual issue, but for the purposes of the instant Motion Plaintiffs have met their burden to allege that the association-in-fact enterprise consisted of Defendant and separate entities. *See Cedric Kushner Promotions*, 533 U.S. at 164, 121 S.Ct. 2087 (citing *Riverwoods Chappaqua Corp. v. Marine Mid-*

land Bank, N.A., 30 F.3d 339, 344 (2d Cir.1994)); *In re Managed Care Litig.*, 298 F.Supp.2d 1259, 1276-77 (S.D.Fla.2003) (finding complaint sufficiently alleged control and participation in association-in-fact enterprise). *Cf. Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir.1997) ("[W]here a large, reputable manufacturer deals with its dealers and other agents in the ordinary way, so that their role in the manufacturer's illegal acts is entirely incidental, differing not at all from what it would be if these agents were the employees of a totally integrated enterprise, the manufacturer plus its dealers and other agents . . . do not constitute an enterprise within the meaning of [RICO]."). Accordingly, the Court cannot conclude that Plaintiffs have failed to allege the existence of an enterprise district from Defendant itself.

Defendant next argues that Plaintiffs have failed to allege the existence of an enterprise because the Complaint does not adequately allege the existence of a common purpose among the members of the association-in-fact. Specifically, Defendant claims that rather than alleging a common purpose between Defendant and the recruiters, Plaintiffs' Complaint indicates that the members of the purported enterprise had divergent goals and purposes. (*See* Compl. ¶ 22 ("Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.").) Defendant therefore contends that as a matter of law, no enterprise exists. Defendant cites to the following language in *Baker* in support of its argument: "[the employer] wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less); and the [immigrant welfare organizations] want [ ] to assist members of [their] ethnic group." *Baker* 357 F.3d at 691. Thus, because the members of the enterprise have divergent goals, Defendant concludes that no association-in-fact enterprise exists.

Plaintiffs respond that in this case, the members of the enterprise indeed share a common purpose namely, "the common purpose of obtaining illegal workers for employment by Mohawk." (Compl.¶ 77.) Moreover, Plaintiffs maintain that no authority exists in the Eleventh Circuit for the proposition that divergent individual goals of persons in a purported association-in-fact enterprise precludes the existence of such enterprise as a matter of law.

The Eleventh Circuit takes a broad approach as to what qualifies as an enterprise. *See United States v. Hewes*, 729 F.2d 1302, 1310-12 (11th Cir.1984) (upholding jury determination that "'informal, de facto association' existed among the defendants that united them in the common purpose of making money from repeated criminal activity") (quoting *Elliott*, 571 F.2d at 898); *Cagnina*, 697 F.2d at 921-922 (finding evidence sufficient to support jury's finding of enterprise where common purpose of making money existed). Because the Complaint in this case explicitly alleges that a common purpose exists—obtaining illegal workers for employment by Defendants—the Court cannot agree with Defendant that Plaintiffs' Complaint is deficient.

In sum, the Court finds that the Complaint adequately sets forth allegations concerning the existence of an enterprise. Specifically, Plaintiffs have sufficiently alleged that Defendant participated in the affairs of a RICO enterprise as opposed to its own affairs, that a RICO enterprise exists distinct from Defendant, and that a common purpose and unified structure exists among the participants in the purported enterprise. Consequently, the Court denies Defendant's Motion to Dismiss on the ground that the Complaint fails to allege the existence of an enterprise.

3. Standing Under RICO

Defendant also argues that Plaintiffs do not have standing to sue because (1) Plaintiffs failed to allege injury to a con-

crete interest in business or property; and (2) Plaintiffs can not show that Defendant's alleged violations of 8 U.S.C.A. § 1324 proximately caused Plaintiffs' injuries. The Court discusses each of those arguments in turn.

a. Whether Plaintiffs Have Alleged Injury to their "Business or Property"

The Court turns first to whether Plaintiffs have alleged an injury to their business or property. Defendant argues that each Plaintiff accepted employment with Defendant at an agreed-upon wage rate, and that Plaintiffs cannot allege an injury to their business or property because Defendant paid each Plaintiff in accordance with those wage rates. In other words, Defendant claims that because it compensated Plaintiffs as the parties agreed, no injury has occurred, and Plaintiffs thus lack standing to pursue this action.

The Court cannot agree that as a matter of law Plaintiffs have failed to allege an injury to their business or property. The premise of Defendant's argument is that Defendant and Plaintiffs were able to bargain freely on a fair wage rate; however, assuming that Plaintiffs have been injured by reason of Defendant's alleged racketeering activities, the presence of illegal workers in the labor pool adversely has affected Plaintiffs' ability to command higher wage rates. In other words, if Plaintiffs are correct regarding issues of causation, Plaintiffs had no power to command higher wage rates due to the influx of illegal workers. Consequently, Plaintiffs' acceptance of lower wages could not act as a waiver of their alleged injuries. *See Mendoza*, 301 F.3d at 1168 n. 4. ("[W]hat is required is precisely what the employees allege here: a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes."). Thus, the Court cannot agree with Defendant that Plaintiffs have failed, as a matter of law, to allege an injury to Plaintiffs' business or property. The Court therefore cannot find that Plaintiffs lack standing based on this argument.

b. Whether Plaintiffs Have Alleged Injury "By Reason of" a Violation of § 1962(c)

Defendant further argues that Plaintiffs have not alleged an injury "by reason of" a violation of § 1962(c) and that Plaintiffs consequently cannot show that Defendant's alleged violations caused Plaintiffs' injuries. Section 1964(c) requires a plaintiff to show that he sustained injury "by reason of" the defendant's violation of § 1962. The Supreme Court, in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992), held that the "by reason of" language of § 1964(c) requires a showing of both direct and proximate causation. 503 U.S. at 268-69, 112 S.Ct. 1311. "In order for a pattern of racketeering activity to be a cognizable cause of civil RICO injury to a private plaintiff, one or more of the predicate acts must not only be the 'but for' cause of the injury, but the proximate cause as well." *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292, 1307 (11th Cir.2003) (citing *Holmes,* 503 U.S. at 268, 112 S.Ct. 1311). Thus, for a plaintiff to have standing under RICO, he must allege and prove that "'his injury flowed directly from the commission of the predicate acts.'" *Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 906 (11th Cir.1998) (quoting *Pelletier*, 921 F.2d at 1499).

In analyzing whether a plaintiff has adequately alleged an injury "by reason of" a violation of § 1962(c), the Supreme Court in *Holmes* recognized that "'the infinite variety of claims that may arise make it virtually impossible to announce a black-letter rule that will dictate the result in every case.'" *Holmes,* 503 U.S. at 272 n. 20, 112 S.Ct. 1311 (quoting *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 536, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983) (footnote omitted)). Thus, "use of the term 'direct' should merely be understood as a reference to the proximate-cause enquiry that is informed by

the [policy] considerations set out in the text [of the *Holmes* opinion]." *Id.* In conducting proximate cause analysis under RICO, a court must therefore consider the following policy considerations on a case-by-case basis: (1) whether other parties are in a more suitable position to vindicate the law—*i.e.* whether the plaintiff is the direct victim of the alleged illegal conduct; (2) whether the court can identify a method to apportion possible recoveries; and (3) whether the damages alleged by the plaintiff are too speculative, that is, whether the court has the ability to identify what portion of the plaintiff's damages arose from the defendant's alleged RICO violations as opposed to other independent conditions. *Id.* at 273, 112 S.Ct. 1311.

In its Motion to Dismiss, Defendant first contends that Plaintiffs cannot show, and thus cannot allege, that Plaintiffs are the direct victims of Defendant's alleged wrongdoing, and that Plaintiffs consequently are not the best-suited persons to maintain this action. Defendant next contends that Plaintiffs' theory of damages is simply too speculative to support a finding that Defendant's conduct proximately caused Plaintiffs' injuries.[6] The Court addresses each of those arguments in turn.[7]

---

[6] Defendant does not contend that other parties are better-situated to vindicate the aims of RICO. Because the Court concludes that Plaintiffs' injuries, as alleged, are not derivative of injury to a third party, the Court sees no reason why a party other than Plaintiffs should instead pursue this action.

[7] As an initial matter, the Court addresses Defendant's argument that Plaintiffs have standing as to pursue their federal RICO action only as to the predicate act of employing illegal workers. Specifically, Defendant claims that because Plaintiffs cannot show that the predicate acts of harboring and transporting illegal aliens and the use and acceptance of fraudulent documents caused injury to Plaintiffs, Plaintiffs lack standing with respect to those predicate acts.

The Eleventh Circuit has stated that "[i]f no injury flowed from a particular predicate act, no recovery lies for the commission of that act."

i. Direct Injury

In the instant action, Defendant first claims Plaintiffs lack standing because the legally authorized hourly workers constituting the putative class are not the direct victims of Defendant's alleged pattern of racketeering activity—*i.e.* Plaintiffs are not the best persons to vindicate RICO. Defendant relies primarily on *Holmes* for the proposition that where a plaintiff's injury is derived from a direct injury to a third party, that plaintiff lacks standing to bring an action pursuant to RICO for such "passed-on" injury. Defendant argues that Plaintiffs are not the "first victims" of Defendant's alleged immigration law violations; rather, the direct victims are the undocumented aliens who, because of their status, cannot command equal wages or enjoy equal benefits, such as workers' compensation.

Plaintiffs cite *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir.2002), in which the Ninth Circuit found that a putative class of legal hourly workers had standing to bring a RICO action against two agricultural companies that had

---

Pelletier, 921 F.2d at 1497-98 (finding no standing as to predicate act of bankruptcy fraud where predicate act actually benefitted plaintiff). However, "a wrongful act 'is a proximate cause if it is a substantial factor in the sequence of reasonable causation.'" *Maiz v. Virani*, 253 F.3d 641, 675 (11th Cir.2001) (quoting *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1399 (11th Cir.1994)) (internal quotation marks omitted). Thus, while a predicate act may not be a "but for" cause of a plaintiff's injuries, the plaintiff may nevertheless have standing to pursue a RICO claim where that predicate act was a substantial factor "in perpetuating [the racketeer's] scheme and in causing significant injury to [the plaintiff]." *Id.*

With respect to the predicate acts of harboring and inducing illegal aliens and the use and acceptance of bogus identification documents, the Court cannot conclude at this point that those predicate acts do not constitute substantial factors in causing injury to Plaintiffs. Accordingly, the Court concludes that Plaintiffs do not lack standing to claim that those predicate acts proximately caused their injuries.

allegedly hired illegal workers, thereby depressing the wages paid to documented workers. 301 F.3d at 1166. Like Defendant in the instant matter, the defendants in *Mendoza* urged the court to find that the plaintiffs were not the "first victims" of the alleged illegal conduct. The court in *Mendoza* concluded that because the defendants engaged in illegal conduct to gain "disproportionate bargaining power in employment contracts" with their workers, the legal, documented employees were the direct victims of the defendants' illegal conduct. Because "the [illegal conduct] had the purpose and direct result of depressing the wages paid to [the documented employees] by the growers," the court could not "discern a more direct victim of the illegal conduct." *Id.* at 1170. The court further explained: "Neither the government nor the undocumented workers are an intervening third party in this scheme, despite the [defendants'] arguments to the contrary." *Id.*

Plaintiffs also rely on *Commercial Cleaning Services, LLC v. Colin Service Systems, Inc.*, 271 F.3d 374 (2d Cir.2001), in which the Second Circuit held that the plaintiffs, who were competitors of the defendant, adequately stated a direct proximate relationship between their injuries and the defendant's alleged illegal conduct. 271 F.3d at 381. In that case, a cleaning service brought a RICO class action, alleging that the defendant, also a cleaning service, hired undocumented aliens in violation of 8 U.S.C.A. § 1324, thereby driving down the defendant's cost of employment. *Id.* at 378. The plaintiff claimed that the defendant's illegal conduct allowed the defendant to charge lower prices for its services, thereby undercutting its competition. *Id.*

The *Commercial Cleaning* court applied the *Holmes* policy considerations, and found that the plaintiffs had suffered direct injury due to the defendant's alleged racketeering activity. *Commercial Cleaning*, 271 F.3d at 385. Specifically, the Second Circuit reasoned that no class of persons would

"have a greater incentive to ensure that a RICO violation does not go undetected or unremedied, and whose recovery would cure the loss suffered by there plaintiffs." *Id.*

The Court finds *Mendoza* persuasive, and applies the *Mendoza* court's reasoning to this case. Here, Plaintiffs clearly allege that their injury is the result of Defendant's attempt to gain a commercial advantage over the employment of its workforce, which directly causes harm to Plaintiffs. Accordingly, the Court finds that the Complaint alleges a direct injury to Plaintiffs. Plaintiffs therefore do not lack standing based on the failure to allege a direct injury.

ii. Speculative Nature of Damages

The Court next considers whether the damages theory alleged in Plaintiffs' Complaint is too speculative to permit Plaintiffs to have standing to pursue their claims. Defendant sets forth a number of arguments in support of its position that the calculation of damages is exceedingly tenuous and speculative. Specifically, Defendant claims that there are numerous other factors that could affect Plaintiffs' wages, such as the demand for labor in the relevant market, the supply of qualified workers, the overall profitability of the industry, and the status of the local, state, national, and international economies.

Defendant also submits that Plaintiffs have failed to allege that Defendant employs a sufficient number of illegal workers or has such a large presence in the labor market to support a conclusion that any pay discrepancies can be attributed to Defendant's allegedly illegal conduct. In particular, Defendant contends that Plaintiffs' allegation that Defendant has assisted "hundreds" of illegal workers is insufficient as a matter of economic sense to cause depressed wages. (*See* Compl. ¶ 61.) Defendant further submits that if it were paying depressed wages to its employees, Plaintiffs could simply seek employment elsewhere.

Defendant also claims that *Mendoza* is distinguishable because the defendants in that case enjoyed market power sufficient to give them the power to "define wages in this labor market, akin to a monopsony or oligopsony." *Mendoza*, 301 F.3d at 1171. Defendant maintains that Plaintiffs have not, and cannot, allege that Defendant has such market power to dictate unilaterally the labor market. Thus, Defendant contends that it is too speculative to gauge the difference between the current level of compensation and the level of compensation that would have existed but for Defendant's alleged illegal conduct.

At this stage in the litigation, however, the Court cannot agree that the damages attributable to Plaintiffs' RICO claims are so tenuous and speculative that the Court should dismiss the Complaint for lack of standing. Simply put, at this point, the Court cannot say that as a matter of law, Plaintiffs have failed to establish that Defendant's alleged RICO violations were the proximate cause of Plaintiffs' depressed wages. Of course, after some discovery it may appear that Plaintiffs' theory is too speculative. At this early juncture, however, the Court cannot dismiss the Complaint for lack of standing on this ground.

iii. Summary

In sum, the Court denies Defendant's Motion to Dismiss on the grounds that Plaintiffs lack standing under RICO to pursue their claims. Specifically, the Court finds that Plaintiffs have sufficiently alleged an injury to their "business or property" and that such injury was proximately caused by Defendant's allegedly illegal conduct. The Court next addresses Defendant's arguments in support of dismissal of Plaintiffs' state law claims.

B. Plaintiffs' Georgia RICO Claims

Plaintiffs' Complaint also includes claims for violations of Georgia RICO, O.C.G.A. § 16-14-4(a) & (c). (Compl.¶¶ 93-105). Defendant contends that Plaintiffs' Georgia RICO claims fail as a matter of law because Defendant, as a corporation, is incapable of violating that statute.

The Eleventh Circuit has recognized that "[u]nder Georgia law, a corporation *qua* corporation, cannot be held to answer for a crime, and therefore could not violate the Georgia RICO statute." *Byrne v. Nezhat*, 261 F.3d 1075, 1105 (11th Cir.2001) (citing *Cobb County v. Jones Group*, 218 Ga.App. 149, 153, 460 S.E.2d 516, 521 (1995)). "This is not to say that a corporation may disregard the law with impunity. If a crime has been committed, the agents of the corporation who are responsible are subject to prosecution." *Id.*

Because RICO predicate acts are actually criminal offenses, O.C.G.A. § 16-2-22, entitled "Criminal responsibility of corporations," applies when determining whether a corporation is vicariously liable for the actions of its employees. O.C.G.A. § 16-2-22; *Cobb County*, 218 Ga.App. at 153, 460 S.E.2d at 521. Section 16-2-22 provides that a corporation may be prosecuted for a criminal act or omission only if:

> (1) The crime is defined by a statute which clearly indicates a legislative purpose to impose liability on a corporation, and an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his office or employment and in behalf of the corporation; or
>
> (2) The commission of the crime is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a managerial official who is acting within the scope of his employment in behalf of the corporation.

O.C.G.A. § 16-2-22(a)(1) & (2).

Defendant first contends that Plaintiffs cannot pursue a Georgia RICO action under § 16-2-22(a)(1) because nowhere in the Georgia RICO statute does any indication of legislative purpose to impose liability on a corporation exist.

The weight of authority supports Defendant's argument. *See Clark v. Sec. Life Ins. Co. of Am.*, 270 Ga. 165, 167 n. 11, 509 S.E.2d 602, 604 n. 11 (1998) ("A corporation may also face prosecution under O.C.G.A. § 16-2- 22(a)(1) for a crime if the statute defining the crime clearly indicates a legislative purpose to impose liability on a corporation. RICO, however, in not such a statute because O.C.G.A. § 16-4-4 prohibits only 'persons' from engaging in racketeering activity."); *Cobb County,* 218 Ga.App. at 153, 460 S.E.2d at 521 ("'RICO does not contain in its definition any indication of a legislative purpose to impose criminal liability on a corporation.'") (quoting incorporated language of trial court's order). Accordingly, the Court concludes that because the Georgia RICO statute does not expressly and clearly indicate a legislative purpose to impose liability on a corporation for violations of the statute, Plaintiffs cannot avail themselves of § 16-2-22(a)(1) to impose liability for Georgia RICO violations on Defendant.

Notwithstanding the inapplicability of § 16-2-22(a)(1), the Court finds that Plaintiffs may pursue their Georgia RICO claims against Defendant under § 16-2-22(a)(2). As the Georgia Supreme Court held: "criminal liability will attach to the employer for the acts of the employee only if the 'crime is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a managerial official who is acting within the scope of his employment in behalf of the corporation.'" *Clark*, 270 Ga. at 167, 509 S.E.2d at 604 (quoting O.C.G.A. § 16-2-22(a)(2).) It is not fatal to Plaintiffs' Complaint that they have not alleged that Defendant's board of directors or any corporate officers acting within the scope of employment authorized, requested, commanded,

performed, or recklessly tolerated violations of Georgia RICO. On the contrary, such facts are a matter of proof; thus, Plaintiffs simply must set forth the necessary proof at trial. *State v. Military Circle Pet Ctr., No. 94, Inc.*, 257 Ga. 388, 389-90, 360 S.E.2d 248, 249 (1987) ("Although the state must prove the applicable provisions of [§ 16-2-22(a)(2)] at trial against a criminal defendant, it is not necessary that the state allege these provisions in the accusation."). At this point, therefore, the Court cannot hold that Plaintiffs' Georgia RICO claims fail as a matter of law for failure to name any managerial official, officer, or similar person of Defendant who would satisfy the requirements of § 16-2-22. Accordingly, the Court denies Defendant's Motion to Dismiss with respect to Plaintiffs' Georgia RICO claims.[8]

---

[8] Defendant also contends that Plaintiffs' Georgia RICO claims fail because Plaintiffs' Complaint fails to allege that violations of 8 U.S.C.A. § 1324 constituted "racketeering activity" for purposes of Georgia RICO. (*See* Compl. ¶ 62 ("Each violation of 8 U.S.C. § 1324 constitutes an act of 'racketeering activity' under [federal RICO], 18 U.S.C. § 1961(F) [sic].").) Plaintiffs respond that Defendant has misread the Complaint, but nonetheless request leave to amend their Complaint to clarify that their Georgia RICO claims are indeed predicated on violations of § 1324.

The Court agrees with Defendant that Plaintiffs' Complaint does not state a cause of action under Georgia RICO with respect to violations of § 1324, but for a different reason than that advanced by Defendant. O.C.G.A. § 16-14-3(9)(A)(xxix) defines "racketeering activity" as including "[a]ny conduct defined as 'racketeering activity' under 18 U.S.C. Section 1961(1)(A), (B), (C), and (D)." O.C.G.A. § 16-14-3(9)(A)(xxix). That definition of racketeering activity, however, does not include those acts falling under § 1961(1)(F). Violations of § 1324 appear in subsection (F), thus acts violating § 1324 cannot qualify as predicate acts for purposes of Georgia RICO. Accordingly, the Court finds that Plaintiffs' Complaint can only allege a claim based on Georgia RICO as to 18 U.S.C.A. § 1546. The Court denies Plaintiffs' request to amend their Complaint to clarify that Plaintiffs' Georgia RICO claims are predicated on violations of § 1324 as futile.

C. Plaintiffs' Unjust Enrichment Claim

Finally, the Court addresses whether Plaintiffs have stated a claim for unjust enrichment arising under Georgia law (Compl.¶¶ 106-110). Specifically, Plaintiffs claim that Defendant's illegal conduct permits Defendant "to reap substantial wage savings" because Defendant pays Plaintiffs lower wages than what Defendant would otherwise be forced to pay. (*Id.* ¶ 107). Plaintiffs also claim that Defendant has been unjustly enriched because the hiring of illegal workers has led to a reduced number of worker's compensation claims; therefore, Defendant retains money it otherwise would have to spend on responding to worker's compensation claims. Plaintiffs further allege that Defendant, through the employment of illegal workers and at the expense of Plaintiffs, enjoys larger profits than Defendant would earn if it used legal, authorized workers. (*Id.* ¶ 109.) Consequently, Plaintiffs claim that Defendant has been unjustly enriched, and that the Court should order Defendant "to disgorge its unlawful profits or otherwise return the full amount of any wage savings and worker's compensation savings that are the direct and proximate result of [Defendant's] unlawful conduct." (*Id.* ¶ 110.)

Unjust enrichment has been defined in the following manner:

> The concept of unjust enrichment in law is premised upon the principle that a party cannot induce, accept, or encourage another to furnish or render something of value to such party and avoid payment for the value received; otherwise the party has been unjustly enriched at the expense of another and, in fairness and good conscience, must reimburse the other to the extent of the value conferred. Inherent in unjust enrichment is the requirement that the receiving party knew of the value

> being bestowed upon them by another and failed to stop the act or to reject the benefit.

Reidling v. Holcomb, 225 Ga.App. 229, 232, 483 S.E.2d 624, 626 (1997); *see also* Larkins, Ga. Contracts, § 12-3 (discussing generally unjust enrichment remedy). Recovery under a theory of unjust enrichment "presupposes the absence of a contractual agreement." *Fed. Ins. Co. v. Westside Supply Co.*, 264 Ga.App. 240, 248, 590 S.E.2d 224, 232 (2003) (citing *Ga. Tile Distribs., Inc. v. Zumpano Enters., Inc.*, 205 Ga.App. 487, 488, 422 S.E.2d 906 (1998)). "'The measure of damages under . . . unjust enrichment is based upon the benefit conferred upon the [recipient] and not the cost to render the service or cost of the goods.'" *Hollifield v. Monte Vista Biblical Gardens, Inc.*, 251 Ga.App. 124, 130-31, 553 S.E.2d 662, 669 (2001) (addition supplied) (quoting *Zampatti v. Tradebank Int'l Franchising Corp.*, 235 Ga.App. 333, 340, 508 S.E.2d 750 (1998)).

Defendant contends that Plaintiffs' unjust enrichment claim fails because Plaintiffs accepted employment at an agreed-upon rate. Plaintiffs have not alleged that Defendant failed to compensate Plaintiffs in accordance with that rate.[9] In other words, Defendant submits that unjust enrichment is inapplicable where an express contract exists for payment of an item or service, and the defendant avoids payment for that item or service. Defendant notes that in this case, the parties entered into a contract for a certain wage rate and Defendant paid wages in accordance with that contract. At this point in the litigation, however, the Court cannot agree that as a matter of law Defendant has been unjustly enriched by suppressing Plaintiffs' wages. Accordingly, the Court denies Defendant's Motion to Dismiss as to Plaintiffs' unjust en-

---

[9] This argument is similar to Defendant's argument with respect to whether Plaintiffs alleged an injury to their business or property. *See supra* Part III.A.3.a.

richment claim as it relates to Defendant's savings in employing Plaintiffs at a diminished wage rate.

The Court notes, however, that Plaintiffs cannot base their claim of unjust enrichment on Defendant's alleged savings with respect to worker's compensation claims. Defendant argues, and the Court agrees, that Plaintiffs lack standing to assert a claim of unjust enrichment as to the amount of money Defendant did not have to spend in dealing with worker's compensation claims. Essentially, the Complaint alleges that because illegal workers tend to refrain from filing worker's compensation claims, and because Defendant consequently spent less money dealing with worker's compensation claims, Defendant enjoyed higher profitability. The Court cannot fathom how higher profit margins due to lower worker's compensation costs are connected in any way to Plaintiffs' receiving lower wages. That is to say, Plaintiffs' labor in no way caused lower worker's compensation costs. Consequently, the Court finds that Plaintiffs cannot claim unjust enrichment as to worker's compensation claims.

IV. Conclusion

ACCORDINGLY, the Court *DENIES IN PART* and *GRANTS IN PART* Defendant's Motion to Dismiss [25]. Specifically, the Court *DENIES* Defendant's Motion to Dismiss as to all Federal and Georgia RICO allegations in Plaintiff's Complaint, *DENIES* Defendant's Motion to Dismiss as to Plaintiffs' unjust enrichment claim as it relates to Defendant's wage savings in employing Plaintiffs at a diminished wage rate, and *GRANTS* Defendant's Motion to Dismiss as to Plaintiff's unjust enrichment claim as it relates to Defendant's savings with respect to worker's compensation claims.

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

[Filed May 27, 2004]

CIVIL ACTION FILE
NO. 4:04-CV-0003-HLM

SHIRLEY WILLIAMS, BONNIE JONES, AND LORA SISSON,
individually and on behalf of a class,
Plaintiffs,

v.

MOHAWK INDUSTRIES, INC.,
Defendant.

ORDER

This is a class action alleging violations of the federal and Georgia Racketeer Influenced and Corrupt Organizations Acts ("RICO"). The case is before the Court on Defendant's Motion for Amendment of the Court's Order on Defendant's Motion to Dismiss to Permit Interlocutory Appeal [46-1] and for Stay of Discovery [46-2].

On April 12, 2004, the Court denied in part and granted in part Defendant's Motion to Dismiss. (Order of Apr. 12, 2004.) The Court found *inter alia* that Plaintiffs had adequately alleged the existence of a RICO enterprise and proximate causation to survive Defendant's Motion to Dismiss. Defendant requests this Court's permission to file an interlocutory appeal as to those two conclusions and requests a stay of discovery pending the appeal. For the reasons set forth below, the Court grants Defendant's Motion.

Pursuant to 28 U.S.C.A. § 1292(b), a district court may permit an interlocutory appeal of an order. 28 U.S.C.A. § 1292(b) provides, in relevant part:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order.

28 U.S.C.A. § 1292(b). Thus, to certify an order for interlocutory review under § 1292, a district judge must find that: (1) the order involves a controlling question of law; (2) a substantial ground for difference of opinion exists with respect to the question of law; and (3) an immediate appeal from the order will materially advance the ultimate termination of the litigation. *Id.* Once the Court certifies an order for appeal under § 1292(b), and the United States Court of Appeals for the Eleventh Circuit grants leave to appeal, the entire order becomes subject to interlocutory appellate review. *City of Jacksonville v. Dept. of Navy*, 348 F.3d 1307, 1310 (11th Cir. 2003).

The Court first examines whether the April 12, 2004, Order involves controlling questions of law. § 1292(b). "A question of law may be deemed 'controlling' if its resolution is quite likely to affect the further course of the litigation, even if it is not certain to do so." *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs., Inc.*, 86 F.3d 565, 659 (7th Cir. 1996). Defendant contends that two "controlling" issues of law exist: (1) whether Plaintiffs have adequately pleaded the

existence of a RICO enterprise; and (2) whether Plaintiffs have adequately pleaded proximate causation with respect to injury to Plaintiffs' business or property. Those issues are "controlling," according to Defendant, because if Plaintiffs have not adequately pleaded the existence of a RICO enterprise or proximate causation, Plaintiffs' RICO claims necessarily fail.

The Court finds Defendant's argument persuasive, and agrees that those questions of law constitute "controlling questions" under § 1292(b) because the resolution of the question "is quite likely to affect the further course of the litigation." Consequently, the Court finds that the first of the § 1292(b) factors counsels in favor of permitting an interlocutory appeal.

The Court next addresses whether substantial ground for difference of opinion exist as to the Court's conclusions in its Order of April 12, 2004. Defendants rely heavily on the Seventh Circuit's opinion in *Baker v. IBP, Inc.*, 357 F.3d 685 (7th Cir. 2004), in support of its argument.

As the Court explained in its April 12, 2004, Order, relatively few reported cases exist dealing with RICO claims on behalf of employees against employers for purposed hiring of illegal workers, and only one case, *Baker*, addresses the issue of pleading the existence of a RICO enterprise in such cases. *Baker*, 357 F.3d at 691. Although the Court distinguished *Baker*, the Court nevertheless recognizes that a difference of opinion exists as to what constitutes sufficient pleading of a RICO enterprise where a plaintiff asserts a RICO claim relating to hiring of illegal aliens. Moreover, the Eleventh Circuit has not spoken directly as to whether an association of recruiters and an employer is sufficient as a matter of law to constitute a RICO enterprise. The Court therefore believes that a substantial ground for difference of opinion exists as to this issue.

Similarly, the Court believes that a substantial ground for difference of opinion exists as to the issue of proximate causation. As with pleading the existence of a RICO enterprise, few courts have addressed proximate causation in a case such as the instant action. While Plaintiffs correctly note that *Baker* "bypass[ed]" the issue of causation, that it is clear from that opinion that the Seventh Circuit is skeptical that under the facts of that case, which are similar to the facts of the instant action, it is possible to allege proximate causation. *Baker*, 357 F.3d at 692.[1] The Court thus believes that a substantial difference of opinion exists as to whether Plaintiffs have adequately alleged that their injuries were the proximate cause of Defendant's alleged racketeering activity. Consequently, the Court finds that the second § 1292(b) factor counsels in favor of permitting an interlocutory appeal of the Court's April 12, 2004, Order.

Finally, the Court examines the third prong of the § 1292(b) factors—*i.e.* whether an interlocutory appeal of the Court's April 12, 2004, Order will materially advance the ultimate termination of this litigation. Clearly, if on appeal the Eleventh Circuit determines that Plaintiffs have not adequately pleaded the existence of a RICO enterprise or proximate causation, then Plaintiffs' RICO claims necessarily fail. Furthermore, such a determination would possibly abrogate the need for substantial expenditure of resources by the Court and the parties. The Court thus believes that this third prong counsels in favor of permitting an interlocutory appeal.

In sum, the Court concludes that an interlocutory appeal of the Court's April 12, 2004, Order is appropriate. The Court will stay discovery in the case pending a ruling from the Eleventh Circuit concerning the interlocutory appeal proceedings.

---

[1] Indeed, the Seventh Circuit explicitly left open the question as to whether it would follow *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163 (9th Cir. 2002).

ACCORDINGLY, the Court *GRANTS* Defendant's Motion for Amendment of the Court's Order on Defendant's Motion to Dismiss to Permit Interlocutory Appeal [46-1] and for Stay of Discovery [46-2]. The Court *AMENDS* the April 12, 2004, Order to provide that Defendant may seek interlocutory review of the April 12, 2004, Order pursuant to 28 U.S.C.A. § 1292(b). The Court *STAYS* discovery in this case until the Eleventh Circuit disposes of the interlocutory appeal. The Court notes that this stay is without prejudice as to issues regarding class certification.

IT IS SO ORDERED, this the 27th day of May, 2004.

/s/ Harold Murphy
UNITED STATES DISTRICT JUDGE

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed Jul. 28, 2004]

No. 04–90017-B

MOHAWK INDUSTRIES, INC.,
Petitioner,

versus

SHIRLEY WILLIAMS, GAIL PELREY, BONNIE JONES,
LORA SISSON, individually and on behalf of a class,
Respondents.

Petition for Permission to Appeal an Order from
the United States District Court for the
Northern District of Georgia

Before TJOFLAT, HULL and MARCUS, *Circuit Judges*.

BY THE COURT:

The Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) is *GRANTED*.

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed Aug. 8, 2005]

No. 04-13740-AA

SHIRLEY WILIAMS, GALE GELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs-Appellees,

versus

MOHAWK INDUSTRIES, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: ANDERSON, HULL and GIBSON*, *Circuit Judges*.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

---

* Honorable John R. Gibson, United States Circuit Judge for the Eighth Circuit, sitting by designation.

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed NOV 22 2006]

No. 04-13740-AA

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, LORA SISSON, individually and on behalf of a class,
Plaintiffs-Appellees,

versus

MOHAWK INDUSTRIES INC.,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

ON REMAND FROM THE UNITED STATES SUPREME COURT

BEFORE: ANDERSON, HULL and GIBSON,* Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the. Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

* Honorable John R. Gibson, U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

APPENDIX I

FEDERAL STATUTES

18 U.S.C. § 1961: Definitions

As used in this chapter—

* * * *

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity ....

* * * *

18 U.S.C. § 1962: Prohibited activities

* * * *

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

* * * *

18 U.S.C. § 1964: Civil remedies

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person

that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

APPENDIX J

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 04-13740-AA

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, and LORA SISSION, individually and on behalf of a class,
Plaintiffs-Appellees,

v.

MOHAWK INDUSTRIES, INC.,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ROME DIVISION

PETITION FOR REHEARING *EN BANC* OF MOHAWK INDUSTRIES, INC.

R. CARL CANNON
CONSTANGY, BROOKS
& SMITH, LLC
230 Peachtree Street, N.W.
Suite 2400
Atlanta, Georgia 30303-1557
Telephone: 404-525-8622
Facsimile: 404-525-6955

CARTER G. PHILLIPS
JUAN P. MORILLO
STEVEN T. COTTREAU
MATTHEW J. WARREN
JULIE A. GURLEY
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Telephone: 202-736-8000
Facsimile: 202-736-8711

Counsel for Appellant

* * * *

II. THE ALLEGED ENTERPRISE IS LEGALLY INSUFFICIENT AND THE PANEL'S DECISION CONFLICTS WITH DECISIONS OF OTHER CIRCUITS.

Plaintiffs alleged that Mohawk, through its unlawful hiring, participated in the conduct of "an association-in-fact enterprise" consisting of "Mohawk and the recruiters" who allegedly provide Mohawk with workers. Compl. ¶ 79. Mohawk argued that the enterprise allegations failed as a matter of law. The panel upheld the sufficiency of these enterprise allegations, but candidly acknowledged that its decision "puts our circuit in conflict with the Seventh Circui[t]." *Williams II* at 13 (citing *Baker* v. *IBP, Inc.*, 357 F.3d 685 (7th Cir. 2004)). This Court should grant *en banc* review to resolve this split with the Seventh Circuit and other circuit courts. *See* Fed. R. App. P. 35(b)(1)(B). Indeed, the fact that this question is one of exceptional importance, and deserving *en banc* review, is evident from the fact that the Supreme Court has previously granted certiorari on it in this case.

The panel's holding that Plaintiffs have adequately pled a RICO enterprise is misguided for two reasons. *First*, the alleged enterprise falls outside of the plain language of RICO's enterprise definition. *Second*, Plaintiffs have not alleged participation in the conduct of an enterprise distinct from Mohawk itself.

1. Plaintiffs' alleged association-in-fact enterprise consists of Mohawk and other companies that allegedly contract with Mohawk to provide recruiting services. The panel upheld the legal sufficiency of this alleged enterprise. Citing this Court's prior decision in *United States* v. *Goldin Industries, Inc.*, the panel explained that a RICO association-in-fact enterprise may consist of "'an association of individual *entities*.'" *Williams II* at 10 (emphasis added) (quoting

Goldin, 219 F.3d 1271, 1275 (11th Cir. 2000)). *Goldin* reiterated a similar holding in *United States* v. *Navarro-Ordas*, 770 F.2d 959, 969 (11th Cir. 1985).

This Court should grant en banc review and overrule the holdings in *Goldin* and *Navarro-Ordas* that a "a group of *corporations* can be a 'group of *individuals* associated in fact.'" *Navarro-Ordas*, 770 F.2d at 969 (emphasis added). This expansive interpretation of RICO's enterprise definition is contradicted by the plain language of that definition. RICO defines the term "enterprise" to "includ[e] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Under RICO, an association-in-fact enterprise is limited to a "group of individuals"—not a group of corporations like the one alleged here.[7]

The statutory term "individuals" encompasses only natural persons, not corporations. In ordinary usage, the noun "individual" means "a single human being as contrasted with a social group or institution." *See Webster's Third New Int'l Dictionary* 1152 (1969). That plain meaning is reinforced by § 1961 itself. For example, the first clause in § 1961(4) separately lists "individual" and "corporation," indicating that Congress did not intend the former to encompass the latter. *See* § 1961(4). Indeed, when confronted with this issue when this case was before the Supreme Court, *the United States did not contend* that corporations were "individuals" within the meaning of RICO's enterprise definition.[8]

---

[7] Mohawk fully set forth all of its arguments in support of this position in its merits briefs in the Supreme Court. *See* Pet. Br. at 12-26, 2006 WL 282167; Pet. Reply at 1-8, 2006 WL 951123. Due to space limitations, only some of those arguments are set forth below.

[8] Indeed, at oral argument in this case, many Justices recognized the force of these arguments. See Tr. of Oral Arg. at *11-17, No. 05-465 (Apr. 26, 2006), 2006 WL 1194498; *id.* at *31 (Roberts, C.J.) (noting that "whatever an individual is [in § 1961(4)] it's different from a corpora-

Instead, the focus before the Supreme Court was on whether the definition of "enterprise"—in light of its introduction by the term "includes"—was comprehensive or instead merely provided a list of enterprise examples that could be expanded upon. RICO itself, however, provides powerful evidence that Congress used "includes" to introduce comprehensive definitions. The term "includes" is used in three other RICO definitions—all of which are comprehensive on their face. *See* 18 U.S.C. § 1961(3), (9), (10) (using "includes" to introduce comprehensive definitions of "person," "documentary material," and "Attorney General"). Moreover, when Congress meant to use "includes" merely to provide examples, it followed the term by the phrase "but not limited to." *See* 18 U.S.C. § 1964(a). Neither *Goldin* and *Navarro-Ordas* took account of this weighty statutory construction evidence. Rehearing *en banc* would give this Court the opportunity properly to interpret RICO's enterprise definition with the benefit of a more thorough consideration of the issue.

2. The Panel's opinion is erroneous in another important respect: it concludes that Mohawk's alleged hiring constitutes participation in an enterprise distinct from Mohawk itself. *Williams II* at 9-15. RICO makes it unlawful for "any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). The Supreme Court has explained that this provision of RICO requires that (i) the RICO defendant be distinct from the alleged enterprise, see *Cedric Kushner Promotions, Ltd.* v. *King*, 533 U.S. 158, 161, 121 S. Ct. 2087, 2090 (2001) (a plaintiff must prove "an 'enterprise' that is not simply the same 'person' referred to by a different name"); and (ii) that the defendant "participated in the conduct of the

---

tion"); *id.* at *32 (Kennedy, J.) (noting that § 1961(4)'s use of the word "individual" "doesn't sound like a corporation").

'*enterprise's* affairs' not just [its] *own* affairs," *Reves* v. *Ernst & Young*, 507 U.S. 170, 185, 113 S. Ct. 1163, 1173 (1993).

Plaintiffs' allegations, however, fail to comport with these principles. As the Seventh Circuit recognized in a materially identical RICO case alleging depressed wages resulting from unlawful hiring, plaintiffs' averments only amount to an allegation that "IBP [the defendant] operates *itself* unlawfully—it is IBP that supposedly hires, harbors, and pays the unlawful workers, for the purpose of reducing its payroll." *See Baker* v. *IBP, Inc.*, 357 F.3d 685, 691 (7th Cir.), *cert. denied*, 125 S. Ct. 412 (2004). In short, the Seventh Circuit correctly held that such allegations do not satisfy RICO's requirements of participation in the conduct of a distinct enterprise. The panel opinion erroneously reaches the opposite conclusion and creates a split (which it acknowledges) with the Seventh Circuit.

The circuit split created by the panel's decision, however, is much deeper. Numerous other circuit courts have held that an enterprise consisting of a corporation plus agents performing services does not constitute a distinct enterprise.[9] The panel's contrary holding permits Plaintiffs to plead around the restrictions imposed by the distinctness requirement simply by adding an outside contractor to the alleged enterprise.

* * * *

---

[9] *See, e.g., Fitzgerald* v. *Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) (a corporation, together with its agents engaging in normal business activities do not constitute an enterprise); *Discon, Inc.* v. *Nynex Corp.*, 93 F.3d 1055, 1064 (2d Cir. 1996) (finding that an enterprise consisting of several entities within a single corporate structure and their "'attorneys, accountants and other agents'" failed the distinctness test), *vacated on other grounds*, 525 U.S. 128, 119 S. Ct. 493 (1998); *Brittingham* v. *Mobil Corp.*, 943 F.2d 297, 303 (3d Cir. 1991) ("enterprise" consisting of a defendant corporation and advertising agencies acting on its behalf is not distinct from the corporation itself), *overruled on other grounds, Jaguar Cars, Inc.* v. *Royal Oaks Motor Co.*, 46 F.3d 258 (3d Cir. 1995).

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

[Filed Jan. 5, 2004]

Civil Action File No. 4 04-CV-03
Complaint—Class Action

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES and LORA SISSON, individually and on behalf of a class,
Plaintiffs,

vs.

MOHAWK INDUSTRIES, INC.,
Defendant.

COMPLAINT

Plaintiffs Shirley Williams ("Williams"), Gale Pelfrey ("Pelfrey"), Bonnie Jones ("Jones") and Lora Sisson ("Sisson"), individually and on behalf of a class, bring this action against Defendant Mohawk Industries, Inc. ("Mohawk"):

I. SUMMARY OF CLAIMS

1.

This is a class action under the federal and Georgia Racketeer Influenced and Corrupt Organizations ("RICO") acts. The members of the class are current and former hourly employees of Mohawk whose wages have been depressed by Mohawk's employment and harboring of large numbers of illegal workers. Plaintiffs seek injunctive and monetary relief on behalf of Mohawk's legally-employed hourly workers in Georgia.

2.

Mohawk is the second largest carpet and rug manufacturer in the United States. In 2002, its carpet and rug net sales were approximately $3.2 billion. Mohawk employs approximately 31,780 persons, most of whom are employed in Northwest Georgia. Mohawk owns or leases at least twenty-six facilities in Georgia.

3.

Mohawk has, in its Georgia facilities, engaged in the widespread employment of illegal workers, *i.e.*, workers who are not authorized to be employed in the United States. By employing and harboring illegal workers, Mohawk is able to reduce labor costs by depressing wages for its hourly workers and discouraging claims for workers compensation.

4.

Mohawk's conduct violates the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("federal RICO"), and Georgia's Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 *et seq.* ("Georgia RICO"), as more fully set forth below.

II. PARTIES, JURISDICTION AND VENUE

5.

Plaintiff Gale Pelfrey is a citizen of Georgia and resides in the Northern District of Georgia. She is eligible to be employed in the United States and is a former hourly employee of Mohawk.

6.

Plaintiff Shirley Williams is a citizen of Georgia and resides in the Northern District of Georgia. She is eligible to be employed in the United States and is a former hourly employee of Mohawk.

7.

Plaintiff Bonnie Jones is a citizen of Georgia and resides in the Northern District of Georgia. She is eligible to be employed in the United States and is a current hourly employee of Mohawk.

8.

Plaintiff Lora Sisson is a citizen of Georgia and resides in the Northern District of Georgia. She is eligible to be employed in the United States and is a former hourly employee of Mohawk.

9.

Defendant Mohawk is a Delaware corporation with its principal place of business in Calhoun, Georgia. Mohawk may be served by service on its registered agent for service of process, Salvatore J. Perillo, Post Office Box 12069, South Industrial Boulevard, Calhoun, Georgia 30703.

10.

Mohawk is subject to the personal jurisdiction of this Court.

11.

This Court has subject matter jurisdiction over this case pursuant to 18 U.S.C. § 1964(c), 28 U.S.C. § 1332 (federal question) and 28 U.S.C. § 1367 (ancillary jurisdiction).

12.

Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b), as Mohawk resides in this district and events giving rise to Plaintiffs' claims occurred in this district. Venue is also proper in this district pursuant to 18 U.S.C. § 1965, as Mohawk resides, is found in and transacts its affairs in the Northern District of Georgia.

III. FACTS

Mohawk's Hiring and Harboring of Illegal Workers

13.

Mohawk employs many thousands of hourly paid workers in its operations in North Georgia.

14.

In an effort to keep labor costs as low as possible, Mohawk has engaged in the illegal hiring of persons who are not eligible for employment in the United States.

15.

Mohawk has accepted for employment and continued to employ workers that it knew or had reason to know were not authorized to work in the United States.

16.

Mohawk has knowingly and recklessly accepted as proof of eligibility for employment false documents or documents that do not match the identity of the person presenting them. For example, Mohawk has accepted drivers' licenses and other documents that obviously depict a person different than the person presenting the document as proof of eligibility for employment.

17.

Mohawk also has knowingly and recklessly accepted as proof of eligibility for employment documents that reflect successive different names for a single person. Indeed, Mohawk frequently employs illegal workers who (a) first present eligibility documents that reflect one name, (b) work at Mohawk for some period of time, (c) leave their jobs at Mohawk, and then (d) return to work at Mohawk and present Mohawk with identification and work eligibility documents showing a different name.

18.

In some instances, when illegal workers have informed Mohawk that they would return to their countries of origin, Mohawk supervisors have encouraged these employees to return to the United States and reapply for work at Mohawk in violation of United States law.

19.

Although Mohawk was and is aware that numerous employees have used or are using identities different from those they had previously used while employed at Mohawk, Mohawk has accepted and continues to accept new identification and work authorization documents that it knew or had reason to know were false or obtained by false statements from these persons.

20.

Mohawk employees and/or supervisors have destroyed eligibility documents showing that workers have used different names and identification papers in an effort to conceal Mohawk's employment and harboring of illegal workers.

21.

Mohawk employees and supervisors have stated that they are aware that illegal workers can easily obtain false identification and work authorization documents.

22.

Mohawk employees have traveled to the United States border, including areas near Brownsville, Texas, to recruit undocumented aliens that recently have entered the United States in violation of federal law. These employees and other persons have transported undocumented aliens from these border towns to North Georgia so that those aliens may procure employment at Mohawk. Mohawk has made various

incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors.

23.

Various recruiters, including Mohawk employees, have provided housing to these illegal workers upon their arrival in North Georgia and have helped them find illegal employment with Mohawk.

24.

Mohawk has conducted occasional audits of its workforce and discovered numerous illegal workers within that workforce. Although these infrequent audits often confirm the presence of large numbers of illegal workers and therefore put Mohawk on further notice that it is employing and harboring illegal workers, Mohawk has not increased the frequency of these audits.

25.

Even when Mohawk terminates illegal workers after discovering that they are not authorized to work in the United States, many of those discharged illegal workers soon return to work at Mohawk under different names. For example, earlier this year, Mohawk discharged three employees that Mohawk had discovered to be illegally working in one of its facilities. Within two months after their discharge, Mohawk re-hired these same employees under different names to work on different shifts in the same facility.

26.

This practice of "recycling" illegal workers is widespread at Mohawk.

27.

Law enforcement personnel have raided Mohawk facilities in pursuit of undocumented aliens. On some of these occasions, illegal workers have hidden in barrels or other con-

tainers or run from the facilities being raided. This conduct has put Mohawk on further notice of the presence of large numbers of illegal workers in its workforce.

28.

Mohawk employees and supervisors have assisted illegal workers in attempting to evade detection by law enforcement personnel.

29.

Law enforcement authorities have arrested illegal workers at Mohawk facilities.

30.

Law enforcement authorities have found undocumented aliens in possession of Mohawk paychecks or identification badges and fraudulent identification documents.

31.

Mohawk supervisors have stated that they prefer hiring illegal workers because they do not complain about working conditions or submit claims for workers' compensation.

32.

Because illegal workers typically have no intention of filing federal tax returns, many illegal workers inflate their claimed exemptions to attempt to avoid withholding taxes. Many of Mohawk's illegal workers have inflated their claimed exemptions to avoid federal income tax withholding. This conduct has further put Mohawk on notice that large numbers of its workforce are not authorized for employment in the United States.

33.

Mohawk's employment and harboring of large numbers of illegal workers has enabled Mohawk to depress wages and thereby to pay all of its hourly employees, including legally

employed workers who are members of the class, wages that are lower than they would be if Mohawk did not engage in this illegal conduct.

34.

Mohawk is the second largest carpet manufacturer in the United States and one of the largest employers in North Georgia. Mohawk employs tens of thousands of hourly workers in North Georgia.

35.

Mohawk's widespread employment and harboring of illegal workers has substantially and unlawfully increased the supply of workers from which Mohawk makes up its hourly workforce. This unlawful expansion of the labor pool has permitted Mohawk to depress the wages that it pays all its hourly employees, including the Plaintiffs and all Class members. If Mohawk had complied with the law by limiting its hourly workforce to those workers authorized to work in the United States, Mohawk would have had to pay higher wages to the Plaintiffs and the members of the Class.

36.

One purpose and intended effect of Mohawk's widespread employment and harboring of illegal workers is to deprive Mohawk's hourly workforce of any individual or collective bargaining power. Because Mohawk knows that many of its workers are not authorized to reside or work in the United States, Mohawk knows that those illegal workers are beholden to Mohawk. Mohawk is further aware that its undocumented workers have virtually no effective means to complain about the terms of their employment.

37.

Mohawk also is aware that its illegal employees are unlikely to file worker's compensation claims against Mohawk. As a direct and proximate result of Mohawk's employment

and harboring of illegal workers, Mohawk has been able to save substantial sums of money in worker's compensation liability that it would have incurred if it had not violated the law.

38.

As a direct and proximate result of Mohawk's employment and harboring of illegal workers, Plaintiffs and all members of the Class have earned wages below the wages they would have earned if Mohawk had complied with the law.

IV. CLASS ACTION ALLEGATIONS

39.

Plaintiffs bring this action on behalf of all persons legally authorized to be employed in the United States who are or have been employed by Mohawk in hourly wage positions in Georgia at any time from January 5, 1999 to the present (the "Class"). The "Class Period" is from January 5, 1999 to the present.

40.

The Class is so numerous that joinder of all Class members is impracticable. Plaintiffs believe the Class contains many thousands of members, and the actual number of Class members can be ascertained through discovery.

41.

There are numerous questions of law and fact common to the Class. Those questions include, but are not limited to:

a. How many persons who are not authorized to be employed in the United States has Mohawk employed in hourly wage positions during the Class Period?

b. Has Mohawk knowingly or with reckless disregard employed workers who are not authorized for employment in the United States during the Class Period?

c. Has Mohawk knowingly or recklessly harbored undocumented aliens in the United States in violation of federal law during the Class Period?

d. To what extent has Mohawk's employment and harboring of persons who are not authorized to be employed in the United States in hourly wage positions depressed the wages Mohawk provides to legal hourly employees?

e. Is Mohawk part of an "enterprise" under the federal RICO statute? and

f. Has Mohawk engaged in a pattern of racketeering activity under the federal RICO statute or acquired and maintained and [sic] interest in a pattern of racketeering activity under the Georgia RICO statute?

42.

The claims of the Plaintiffs are typical of the claims of the Class. Plaintiffs are or were hourly workers whose wages have been depressed by Mohawk's employment and harboring of illegal workers. Plaintiffs have no interests that are antagonistic or adverse to the other Class members.

43.

Plaintiffs were injured by direct and proximate reason of Mohawk's illegal conduct.

44.

Plaintiffs will fairly and adequately protect the interests of the class.

45.

Plaintiffs are adequate representatives of the Class. Plaintiffs are each authorized for employment in the United States and are or were hourly Mohawk workers, whose wages have been depressed by Mohawk's employment and harboring of

illegal workers. Plaintiffs have retained counsel that are experienced in class action litigation, RICO litigation and complex litigation. Accordingly, Plaintiffs will fairly and adequately protect and represent the interests of the Class.

46.

Plaintiffs seek certification of a class, alternatively, under Fed. R. Civ. P. 23(b) (2) or 23(b) (3), or a combination thereof.

47.

Mohawk's employment and harboring of illegal workers has the effect of depressing wages and benefits to the detriment of all members of the Class. Accordingly, declaratory and injunctive relief that prevents Mohawk from continuing to employ or harbor illegal workers is appropriate on a class wide basis.

48.

The questions of law and fact common to all members of the Class predominate over any questions that may affect only individual members of the Class.

49.

A class action is a superior method of adjudicating the Class members' claims because individual actions would unnecessarily burden the Court and create the risk of inconsistent results.

50.

Given the significant expense required to prosecute the foregoing claims against Mohawk, the costs of individual actions would exceed or consume the amount recovered in any individual action. The expense of pursuing individual actions will require individual members of the Class to forego their individual claims against Mohawk if they are not permitted to pursue those claims as a Class.

51.

Plaintiffs are not aware of any litigation concerning this controversy that has already been initiated by or against any members of the Class.

52.

Because both Mohawk and the large majority of the Class members reside in this district and many of the events giving rise to this action took place in this district, it is both desirable and efficient to concentrate the litigation of these claims in this particular forum.

53.

This action is manageable because the evidence proving that Mohawk is engaging in the alleged conduct is common to the Class. Furthermore, the identities of the Class members are known to Mohawk.

V. MOHAWK HAS ENGAGED IN A PATTERN OF RACKETEERING ACTIVITY

54.

Mohawk is engaged in an ongoing pattern of racketeering activity as defined by 18 U.S.C. § 1961(5).

55.

The federal RICO pattern of racketeering activity engaged in by Mohawk consists of more than two acts of racketeering activity, the most recent of which occurred within ten years after the commission of a prior act of racketeering activity.

56.

Mohawk is engaged in an ongoing pattern of racketeering activity as defined by O.C.G.A. § 16-14-3(8).

57.

The Georgia RICO pattern of racketeering activity engaged in by Mohawk consists of more than two acts of racketeering activity, the most recent of which occurred within four years after the commission of a prior act of racketeering activity.

58.

For purposes of federal RICO, the racketeering activity includes an open and ongoing pattern of violations of Section 274 of the Immigration and Nationality Act, 8 U.S.C. § 1324(a).

59.

Specifically Mohawk has violated and continues to violate 8 U.S.C. § 1324(a)(3)(A), which makes it a federal crime to: "knowingly hire[] for employment at least 10 individuals with actual knowledge that the individuals are aliens . . ." during a 12 month period. Mohawk has violated this provision of the Act, including by employing more than 10 aliens per year each year for the last four years, knowing that each such person was (a) smuggled or otherwise brought into the United States in violation of U.S. law; (b) illegally harbored once in the United States; (c) not lawfully admitted to the United States for permanent residence; and/or (d) not authorized for employment in the United States.

60.

Mohawk has also violated and continues to violate 8 U.S.C. § 1324(a)(1)(A)(iii), which makes it a federal crime to "conceal,[], harbor[] or shield from detection, or attempt[] to conceal, harbor or shield from detection . . ." aliens who have entered the U.S. illegally. Mohawk has violated this provision by (a) knowingly employing illegal aliens within its factories, warehouses and other facilities in Georgia and/or (b) taking steps to shield those illegal aliens from detection, by, among other things, helping them evade detection during law enforcement searches and inspections.

61.

Furthermore, Mohawk has also violated and continues to violate 8 U.S.C. § 1324(a)(1)(A)(iv), which prohibits any person or entity from "encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law[.]" By knowingly or recklessly employing and harboring undocumented aliens in its Georgia facilities, Mohawk has helped hundreds of aliens to avoid detection and enabled them to remain in the United States in violation of U.S. law. And by successively hiring and employing the same undocumented aliens under different names and accepting false identification and work authorization documents that reflect different identities for these aliens, Mohawk has knowingly or recklessly encouraged any undocumented aliens that are discovered to return to the United States and to their employment at Mohawk in violation of United States law.

62.

Each violation of 8 U.S.C. § 1324 constitutes an act of "racketeering activity" under the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(F).

63.

For purposes of both federal and Georgia RICO, the racketeering activity also includes open and ongoing violations of 18 U.S.C. § 1546(a), including Mohawk's acceptance of identification documents and other documents that authorize employment in the United States that Mohawk knew or had reason to know were not lawfully issued for the bearer's use, were false and/or were obtained by false statements.

64.

Mohawk has also violated and continues to violate 18 U.S.C. § 1546(b) by using identification documents that Mo-

hawk knew or had reason to know were false and/or not lawfully issued to the bearer to falsely verify the eligibility of the persons presenting them to work at Mohawk, and recording information from those documents on I-9 forms.

65.

Each violation of 18 U.S.C. § 1546 constitutes "racketeering activity" under the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(B).

66.

Each violation of 18 U.S.C. § 1546 also constitutes "racketeering activity" under the Georgia Racketeer Influenced and Corrupt Organizations Act. O.C.G.A. § 16-14-3(9)(A)(xxix).

The Acts of Racketeering Activity Committed by Mohawk Are Related

67.

The acts of racketeering activity committed by Mohawk have the same or similar methods of commission in that they involve the knowing employment of illegal workers, the concealment, harboring and shielding from detection of illegal workers, and the acceptance or use of fraudulent documents in connection with the hiring of illegal workers.

68.

The acts of racketeering activity committed by Mohawk have the same or similar objective: the reduction of wages paid to Mohawk's hourly workforce.

69.

The acts of racketeering activity committed by Mohawk have the same or similar victims, including the plaintiffs and the other members of the Class.

70.

The acts of racketeering activity committed by Mohawk are otherwise related by distinguishing characteristics including, but not limited to, the involvement of Mohawk, illegal workers, and other members of the association-in-fact enterprise identified in paragraphs 76-84.

The Acts of Racketeering Activity Committed by Mohawk Involve a Distinct Threat of Long-Term Racketeering Activity

71.

Mohawk's acts of racketeering activity involve a distinct threat of long-term racketeering activity.

72.

Mohawk's practice of knowingly employing, harboring, concealing and shielding illegal workers and Mohawk's acceptance and use of documents that are not lawfully issued for the use of the possessor or are false has continued for years, is ongoing at the present time and will continue into the future unless halted by judicial intervention.

73.

Mohawk's knowing employment, harboring, concealing and shielding of illegal workers and its acceptance and use of documents that are not lawfully issued for the use of the possessor or are false is part of its regular way of conducting business.

74.

Mohawk has committed hundreds, and probably thousands, of violations of 8 U.S.C. § 1324 and 18 U.S.C. § 1546 as part of its pattern of racketeering activity.

75.

Mohawk's knowing employment, harboring, concealing and shielding of illegal workers and its acceptance and use of

documents that are not lawfully issued for the use of the possessor or are false is so pervasive that illegal workers now constitute a majority of the work force in many of Mohawk's facilities in North Georgia.

VI. THE ENTERPRISE

76.

Mohawk has engaged in an open and ongoing pattern of violations of 8 U.S.C. § 1324 and 18 U.S.C. § 1546 during the last five years through its participation in an association-in-fact enterprise with third party employment agencies and other recruiters, including Temporary Placement Services ("TPS"), that supply Mohawk with illegal workers. Each recruiter is paid a fee for each worker it supplies to Mohawk, and some of those recruiters work closely with Mohawk to meet its employment needs by offering a pool of illegal workers who can be dispatched to a particular Mohawk facility on short notice as the need arises. Some recruiters find workers in the Brownsville, Texas area and transport them to Georgia. Others, like TPS, have relatively formal relationships with the company in which they employ illegal workers and then loan or otherwise provide them to Mohawk for a fee. These recruiters are sometimes assisted by Mohawk employees who carry a supply of social security cards for use when a prospective or existing employee needs to assume a new identity.

77.

The recruiters and Mohawk share the common purpose of obtaining illegal workers for employment by Mohawk. The enterprise has worked in this fashion continuously over at least the last five years.

78.

Mohawk participates in the operation and management of the affairs of the enterprise, which exists for Mohawk's benefit.

79.

This association of Mohawk and the recruiters constitutes an association-in-fact enterprise pursuant to 18 U.S.C. § 1961(4).

80.

The enterprise affects interstate commerce in a variety of ways.

81.

The enterprise affects interstate commerce in that the illegal workers employed by Mohawk travel in international and interstate commerce in order to reach Mohawk facilities in North Georgia.

82.

The enterprise also affects interstate commerce in that it reduces the income of the legal workers who are still part of the Mohawk hourly workforce.

83.

The enterprise also affects interstate commerce in that Mohawk, a member of the enterprise, is directly engaged in the production, distribution and acquisition of goods and services in interstate commerce.

84.

Mohawk accepted and retained the benefits of the acts of racketeering activity, thereby ratifying the conduct of its managers, employees, and the members of the enterprise who assisted it in committing those acts of racketeering activity.

VII. MOHAWK HAS CAUSED PLAINTIFFS' WAGES TO BE DEPRESSED

85.

Mohawk's violations of federal and Georgia RICO proximately have caused the wages of Pelfrey, Williams, Jones, Sisson and all other members of the Class to be depressed below what they would have been in a labor market comprised of legally employed workers.

86.

Pelfrey, Williams, Jones, Sisson and the Class have suffered an injury to their "business or property," *i.e.* lost wages, as a direct result of Mohawk's violations of federal RICO, and injury as a result of Mohawk's violations of Georgia RICO.

87.

Mohawk's unlawful conduct has allowed Mohawk to earn or retain significant funds to which it is not entitled. For example, Mohawk's widespread employment of illegal workers has permitted Mohawk to depress the wages for its hourly workers and to reduce the expenses it incurs as a result of worker's compensation claims. These savings contribute to Mohawk's profit margins and provide the financial motive for Mohawk's hiring of illegal workers.

COUNT I

(Violation of 18 U.S.C. § 1962(c))

88.

Plaintiffs reallege and incorporate by reference herein the allegations set forth in paragraphs 1-87 as if fully restated hereinafter.

89.

The foregoing conduct constitutes a violation of 18 U.S.C. § 1962(c).

90.

Plaintiffs have been injured in their property by reason of Mohawk's violations of 18 U.S.C. § 1962(c).

91.

The injuries suffered by plaintiffs were caused by Mohawk's violations of 18 U.S.C. § 1962(c).

92.

Pursuant to 18 U.S.C. § 1964(c), plaintiffs are entitled to recover threefold the damages they have sustained and their costs of suit, including reasonable attorney's fees.

COUNT II

(Violation of O.C.G.A. § 16-14-4(a))

93.

Plaintiffs reallege and incorporate by reference herein the allegations set forth in paragraphs 1-92 as if fully restated hereinafter.

94.

Mohawk has acquired and maintained an interest in and control of personal property, including money, through a pattern of racketeering activity.

95.

Plaintiffs have been injured by reason of Mohawk's violation of O.C.G.A. § 16-14-4(a) and are entitled to recover three times the actual damages sustained.

96.

In addition, Mohawk's actions showed wilfull misconduct, malice, fraud, wantonness, oppression and an entire want of care that raises the presumption of conscious indifference to consequences and specific intent to cause harm, entitling plaintiffs to receive punitive damages sufficient to deter, pen-

alize, or punish Mohawk in light of the circumstances of the case.

97.

Plaintiff are also aggrieved persons within the meaning of O.C.G.A. § 16-14-6(b). As a result, Plaintiffs are entitled to appropriate preliminary and permanent injunctive relief.

98.

Pursuant to O.C.G.A. § 16-14-6(a), plaintiffs ask the Court to issue appropriate orders and judgment requiring Mohawk to cease its illegal conduct and imposing reasonable restrictions upon Mohawk's future activities sufficient to prohibit future violations of the law.

COUNT III

(Violation of O.C.G.A. § 16-14-4(c))

99.

Plaintiffs reallege and incorporate by reference herein the allegations set forth in paragraphs 1-98 as if fully restated hereinafter.

100.

Mohawk has endeavored to violate O.C.G.A. § 16-14-4(a), in violation of O.C.G.A. § 16-14-4(c).

101.

Mohawk has also conspired with TPS and other recruiters, known and unknown, to violate O.C.G.A. § 16-14-4(a), in violation of O.C.G.A. § 16-14-4(c).

102.

Mohawk has committed overt acts, which are also acts of racketeering activity, in furtherance of the conspiracy. These overt acts include violations of 18 U.S.C. § 1546.

103.

Mohawk has also committed overt acts in furtherance of the conspiracy by having Mohawk employees travel in interstate commerce for the purpose of assisting Mohawk in hiring illegal workers.

104.

Mohawk's actions show wilfull misconduct, malice, fraud, wantonness, oppression and an entire want of care that would raise the presumption of conscious indifference to consequences, and specific intent to cause harm, entitling plaintiffs to receive punitive damages sufficient to deter, penalize or punish Mohawk.

105.

Mohawk's violations of federal and Georgia RICO are intended to and do in fact depress wages, and the Class is the direct victim of these violations.

COUNT IV

(Unjust Enrichment in Violation of Georgia Law)

106.

Plaintiffs reallege and incorporate by reference herein the allegations set forth in paragraphs 1-105 as if fully restated hereinafter.

107.

Mohawk's employment and harboring of illegal workers has had the purpose and effect of depressing the wages paid to Mohawk's hourly workers who are eligible for employment in the United States. Mohawk's conduct therefore is intended to and has the effect of permitting Mohawk to reap substantial wage savings.

108.

Mohawk's employment and harboring of illegal workers also has had the purpose and effect of reducing the number of worker's compensation claims that Mohawk receives. Mohawk supervisors have stated that they prefer hiring illegal workers in part because they do not submit worker's compensation claims. Mohawk's conduct therefore is intended to and has the effect of permitting Mohawk to limit the amount it must spend to respond to worker's compensation claims.

109.

The savings that Mohawk has been able to achieve and continues to achieve through its employment and harboring of illegal workers have been unjustly and inequitably conferred on Mohawk at the expense of its hourly workers who are authorized for employment in the United States, including Plaintiffs and all other members of the Class. These cost savings permit Mohawk to earn larger profits than it would be able to earn if it did not employ and harbor illegal workers.

110.

Under the circumstances, Mohawk has been unjustly enriched at the expense of the Plaintiffs and all the members of the Class. Mohawk therefore should be ordered to disgorge its unlawful profits or otherwise return the full amount of any wage savings and worker's compensation savings that are the direct and proximate result of Mohawk's unlawful conduct.

XIII. PRAYER FOR RELIEF

Plaintiffs Pelfrey, Williams, Jones and Sisson demand judgment and other relief as follows:

A. Certification of a Class pursuant to Fed. R. Civ. P. 23;

B. Judgment in an amount equal to three times the actual damages sustained by the Class, pursuant to 18 U.S.C. § 1964(c);

C. Reasonable attorney's fees, pursuant to 18 U.S.C. § 1964(c);

D. Judgment in an amount equal to three times the actual damages sustained by the Class, pursuant to O.C.G.A. § 16-14-6(c);

E. Attorneys' fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred, pursuant to O.C.G.A. § 16-14-6(c);

F. Appropriate orders and judgments prohibiting Mohawk from engaging in the violations of law alleged herein, pursuant to O.C.G.A. § 16-14-4(a) and (b);

G. Judgment in an amount to be proven at trial that requires Mohawk to disgorge any unlawful profits or otherwise return the full amount of its unjust enrichment;

H. Trial by jury; and

I. Such other relief as the Court deems just and proper.

This 6th day of January, 2004.

Respectfully submitted

/s/ Bobby Lee Cook
BOBBY LEE COOK
Georgia Bar No. 183100

COOK & CONNELLY
9899 Commerce Street
Summerville, GA 30747
(706) 857-3421
(706) 857-1520 (facsimile)

/s/ John E. Floyd
Georgia Bar No. 266413
Joshua F. Thorpe
Georgia Bar No. 710665
Ronan P. Doherty
Georgia Bar No. 224885
Nicole G. Iannarone
Georgia Bar No. 382510

BONDURANT, MIXSON & ELMORE, LLP
1201 W. Peachtree Street, N.W.
3900 One Atlantic Center
Atlanta, Georgia 30309
(404) 881-4000
(404) 88I-4111 (facsimile)

/s/ Matthew Thames w/ permission
MATTHEW THAMES
Georgia Bar No. 703130

GODDARD, THAMES, HAMMONTREE
& BOLDING
2716 Cleveland Hwy.
P.O. Box 399
Dalton, GA 30722-0399
(706) 278-0464
(706) 278-0465 (facsimile)

/s/ Howard Foster w/permission
HOWARD FOSTER*

JOHNSON & BELL, LTD
55 E. Monroe Street
Suite 4100
Chicago, IL 60603
(312) 372-0770
(312) 372-9818 (facsimile)

*Application for admission pro hac vice has been submitted